

By Albert Patterson

H.J.R. No. 31

A JOINT RESOLUTION

1 proposing a constitutional amendment permitting an encumbrance to
2 be fixed on a homestead for certain extensions of credit.

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Section 50, Article XVI, Texas Constitution, is
5 amended to read as follows:

6 Sec. 50. (a) The homestead of a family, or of a single
7 adult person, shall be, and is hereby protected from forced sale,
8 for the payment of all debts except for:

9 (1) the purchase money thereof, or a part of such
10 purchase money;

11 (2) ~~[7]~~ the taxes due thereon;

12 (3) ~~[7]~~ an owelty of partition imposed against the
13 entirety of the property by a court order or by a written agreement
14 of the parties to the partition, including a debt of one spouse in
15 favor of the other spouse resulting from a division or an award of
16 a family homestead in a divorce proceeding;

17 (4) ~~[7]~~ the refinance of a lien against a homestead,
18 including a federal tax lien resulting from the tax debt of both
19 spouses, if the homestead is a family homestead, or from the tax
20 debt of the owner;

21 (5) ~~[7--or-for]~~ work and material used in constructing
22 improvements thereon, if ~~[and-in-this-last-case-only-when]~~ the work
23 and material are contracted for in writing, with the consent of
24 both spouses, in the case of a family homestead, given in the same

1 manner as is required in making a sale and conveyance of the
2 homestead; or

3 (6) an extension of credit for any other purpose, if
4 the extension of credit meets the requirements of Subsection (d) of
5 this section.

6 (b) The [nor-may-the] owner or claimant of the property
7 claimed as homestead, if married, may not sell or abandon the
8 homestead without the consent of the other spouse, given in such
9 manner as may be prescribed by law.

10 (c) No mortgage, trust deed, or other lien on the homestead
11 shall ever be valid, except for a debt described by this section,
12 whether such mortgage, or trust deed, or other lien, shall have
13 been created by the owner alone, or together with his or her
14 spouse, in case the owner is married. All pretended sales of the
15 homestead involving any condition of defeasance shall be void. A
16 purchaser or lender for value without actual knowledge may
17 conclusively rely on an affidavit that designates other property as
18 the homestead of the affiant and that states that the property to
19 be conveyed or encumbered is not the homestead of the affiant.

20 (d) An extension of credit under Subsection (a)(6) of this
21 section must be the only debt secured by the homestead. Any prior
22 debt secured by the homestead must be paid in full before the
23 extension of credit under Subsection (a)(6) of this section or
24 refinanced as part of the extension of credit under Subsection
25 (a)(6) of this section. A lender may not require that a person
26 obtain an extension of credit under Subsection (a)(6) of this
27 section as a condition of receiving an extension of credit not

1 secured by the homestead.

2 SECTION 2. This proposed constitutional amendment shall be
3 submitted to the voters at an election to be held November 4, 1997.
4 The ballot shall be printed to permit voting for or against the
5 proposition: "The constitutional amendment permitting a homestead
6 to be used to secure a debt that is the sole debt secured by the
7 homestead."

HOUSE COMMITTEE REPORT

97 APR 29 PM 6:17

HOUSE REPORT

1st Printing

By Patterson, Marchant, Danburg, Rabuck,
Solomons, et al.

H.J.R. No. 31

Substitute the following for H.J.R. No. 31:

By Marchant

C.S.H.J.R. No. 31

A JOINT RESOLUTION

1 proposing a constitutional amendment permitting an encumbrance
2 against homestead property for certain extensions of equity credit.

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Section 50, Article XVI, Texas Constitution, is
5 amended to read as follows:

6 Sec. 50. (a) The homestead of a family, or of a single
7 adult person, shall be, and is hereby protected from forced sale,
8 for the payment of all debts except for:

9 (1) the purchase money thereof, or a part of such
10 purchase money;

11 (2) [7] the taxes due thereon;

12 (3) [7] an owelty of partition imposed against the
13 entirety of the property by a court order or by a written agreement
14 of the parties to the partition, including a debt of one spouse in
15 favor of the other spouse resulting from a division or an award of
16 a family homestead in a divorce proceeding;

17 (4) [7] the refinance of a lien against a homestead,
18 including a federal tax lien resulting from the tax debt of both
19 spouses, if the homestead is a family homestead, or from the tax
20 debt of the owner;

21 (5) [7--or-for] work and material used in constructing
22 improvements thereon, if [~~and-in-this-last-case-only-when~~] the work
23 and material are contracted for in writing, with the consent of
24 both spouses, in the case of a family homestead, given in the same

1 manner as is required in making a sale and conveyance of the
2 homestead;

3 (6) an extension of credit for any other purpose, if
4 the extension of credit meets the requirements of Subsection (d) of
5 this section; or

6 (7) an equity loan.

7 (b) The [nor-may-the] owner or claimant of the property
8 claimed as homestead, if married, may not sell or abandon the
9 homestead without the consent of the other spouse, given in such
10 manner as may be prescribed by law.

11 (c) No mortgage, trust deed, or other lien on the homestead
12 shall ever be valid, except for a debt described by this section,
13 whether such mortgage, or trust deed, or other lien, shall have
14 been created by the owner alone, or together with his or her
15 spouse, in case the owner is married. All pretended sales of the
16 homestead involving any condition of defeasance shall be void. A
17 purchaser or lender for value without actual knowledge may
18 conclusively rely on an affidavit that designates other property as
19 the homestead of the affiant and that states that the property to
20 be conveyed or encumbered is not the homestead of the affiant.

21 (d) An extension of credit under Subsection (a)(6) of this
22 section must be the only debt secured by the homestead. Any prior
23 debt secured by the homestead must be paid in full before the
24 extension of credit under Subsection (a)(6) of this section or
25 refinanced as part of the extension of credit under Subsection
26 (a)(6) of this section. A lender may not require as a condition on
27 an extension of credit under Subsection (a)(6) of this section that

1 the proceeds of the extension of credit be used for a particular
2 purpose.

3 (e) At the time the homestead owner first requests a lender
4 to make an equity loan under Subsection (a)(7) of this section, the
5 lender of an equity loan must provide to the owner the following
6 written notice in conspicuous bold capitalized type:

7 "YOU ARE PLEDGING YOUR HOMESTEAD AS COLLATERAL TO SECURE
8 PAYMENT OF A LOAN. IF YOU DO NOT REPAY THE LOAN OR IF YOU FAIL TO
9 MEET THE TERMS OF THE LOAN, THE LENDER MAY FORECLOSE AND SELL YOUR
10 HOME. THE LENDER MUST GIVE YOU A COPY OF ALL DOCUMENTS YOU SIGN.
11 WHEN YOU PAY THE LOAN IN FULL, THE LENDER MUST CANCEL AND RETURN
12 THE NOTE TO YOU OR ASSIGN IT TO THE PERSON PAYING OFF THE LOAN."

13 "THE LENDER MAY NOT: (1) DEMAND THAT YOU PAY OFF THE LOAN
14 EARLIER THAN YOU AGREED IF THE FAIR MARKET VALUE OF YOUR HOME
15 DECREASES, UNLESS THE DECREASE IS CAUSED BY SUBSTANTIAL DAMAGE OR
16 DESTRUCTION TO THE HOMESTEAD PROPERTY, INCLUDING A CONDEMNATION OR
17 OTHER TAKING; OR IF YOU DO NOT PAY SOME OTHER LOAN THAT IS NOT
18 SECURED BY YOUR HOME; (2) SEEK RECOURSE AGAINST YOU OR TAKE ANY
19 ASSETS OTHER THAN YOUR HOME IF YOU DO NOT REPAY THE LOAN OR MEET
20 THE TERMS OF THE LOAN, UNLESS THE LENDER HAS ELECTED TO SEEK
21 JUDICIAL FORECLOSURE AND THE COURT HAS ISSUED AN ORDER ALLOWING USE
22 OF THOSE OTHER ASSETS TO SATISFY THE DEBT; (3) ESTABLISH AN
23 OPEN-END ACCOUNT TO ACCESS THE LOAN; (4) REQUIRE THAT YOU USE THE
24 LOAN TO PAY OFF ANOTHER LOAN THAT IS NOT SECURED BY YOUR HOME; (5)
25 CLOSE BEFORE 12 DAYS AFTER YOU APPLIED FOR THE LOAN; (6) CHARGE YOU
26 A PENALTY IF YOU REPAY THE LOAN IN ADVANCE; (7) REQUIRE YOU TO PAY
27 FEES, OTHER THAN INTEREST, THAT EXCEED, IN THE AGGREGATE, THREE

1 PERCENT OF THE LOAN AMOUNT; (8) ACCEPT AN ASSIGNMENT OF WAGES AS
2 SECURITY FOR THE LOAN; (9) ACCEPT A CONFESSION OF JUDGMENT OR POWER
3 OF ATTORNEY TO APPEAR FOR YOU AT A JUDICIAL PROCEEDING; OR (10)
4 ACCEPT AN INSTRUMENT THAT YOU HAVE SIGNED THAT HAS BLANKS LEFT TO
5 BE FILLED IN."

6 "IF YOU CHANGE YOUR MIND ABOUT THIS LOAN, YOU HAVE AT LEAST
7 THREE DAYS AFTER YOU SIGN THE LOAN DOCUMENTS TO NOTIFY THE LENDER
8 THAT YOU HAVE CHANGED YOUR MIND AND YOU WILL HAVE NO FURTHER
9 OBLIGATION TO THE LENDER. THIS LOAN MAY BE CLOSED ONLY AT THE
10 OFFICE OF THE LENDER, A TITLE COMPANY, OR AN ATTORNEY. THE LENDER
11 MAY FORFEIT THE RIGHT TO COLLECT THE LOAN IF THE LENDER DOES NOT
12 COMPLY WITH THE LAW GOVERNING EQUITY LOANS."

13 "THIS LOAN MAY BE MADE ONLY WITH THE VOLUNTARY CONSENT OF
14 EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE. THIS LOAN MAY
15 ONLY BE MADE BY A LAWFULLY AUTHORIZED LENDER. THIS LOAN MAY NOT BE
16 SECURED BY YOUR HOME IF: (1) YOUR HOME IS SECURITY FOR ANOTHER
17 EQUITY LOAN; OR (2) IF THE LOAN IS TO BE SECURED WITH PROPERTY
18 OTHER THAN YOUR HOME. ALL THE DEBTS AGAINST YOUR HOME, INCLUDING
19 THE EQUITY LOAN, MAY NOT EXCEED 75 PERCENT OF THE FAIR MARKET VALUE
20 OF YOUR HOME AT THE TIME YOU CLOSE THIS LOAN. THE LOAN MUST BE
21 SCHEDULED TO BE REPAYED IN SUBSTANTIALLY EQUAL MONTHLY INSTALLMENTS
22 BEGINNING NO LATER THAN TWO MONTHS FROM THE DATE PRINCIPAL IS
23 ADVANCED, AND THE PAYMENTS MUST COVER, AT A MINIMUM, THE INTEREST
24 AND PRINCIPAL ACCRUED IN THE PAYMENT PERIOD."

25 (f) The notice must be signed by the lender and the borrower
26 at the closing of the equity loan and must include a statement of
27 the fair market value of the homestead property at the time of

1 closing.

2 (g) A lender or any holder of an equity loan must:

3 (1) deliver to the borrower a copy of the promissory
4 note and all other documents signed by the borrower related to the
5 equity loan;

6 (2) disclose in any mortgage, deed of trust, security
7 instrument, or other instrument securing the loan that the loan is
8 an equity loan made under the authority of this section; and

9 (3) within a reasonable time after termination and
10 full payment of the equity loan:

11 (A) cancel and return the note to the borrower
12 and give the borrower a release in recordable form of any mortgage,
13 deed of trust, security instrument, or other instrument securing
14 the loan; or

15 (B) endorse the note and assign any mortgage,
16 deed of trust, or other security instrument to a lender that is
17 refinancing the loan and advancing funds to discharge the equity
18 loan indebtedness at the request of the borrower and in renewal and
19 extension of the security instrument.

20 (h) A lender or any holder of an equity loan may not:

21 (1) demand payment, accelerate the remaining payments,
22 or foreclose any lien securing payment of an equity loan because of
23 a decrease in the fair market value of the homestead, unless the
24 decrease is caused by substantial damage or destruction to the
25 homestead property, including a condemnation or other taking;

26 (2) demand payment, accelerate the remaining payments,
27 or foreclose any lien securing payment of an equity loan because of

1 the borrower's default under any other indebtedness not secured by
2 a prior valid encumbrance on the homestead;

3 (3) require or compel the borrower to apply the
4 proceeds of the equity loan to repay another debt that is not
5 secured by the homestead;

6 (4) require, compel, or accept a borrower's homestead
7 as collateral on a debt not described by Subsection (a) of this
8 section;

9 (5) establish a form of open-end account or other
10 nondeterminate principal amount or indefinite term of loan that may
11 be debited or under which credit may be extended from time to time;

12 (6) close the equity loan before the 12th day after
13 the date the lender receives a completed application for the equity
14 loan;

15 (7) impose a prepayment penalty or other charge for
16 advance payments made by the borrower;

17 (8) require the borrower to pay, in addition to any
18 interest, fees to the lender or any other person that are necessary
19 to originate, evaluate, maintain, record, insure, or service the
20 loan that exceed, in the aggregate, three percent of the original
21 principal amount of the equity loan;

22 (9) accept an assignment of wages as security for the
23 loan;

24 (10) accept a confession of judgment or power of
25 attorney running to the lender or to a third person to confess
26 judgment or to appear for a borrower in a judicial proceeding; or

27 (11) accept an instrument in which blanks are left to

1 be filled in by the borrower.

2 (i) An equity loan must be a debt secured only by the
3 homestead property. Unsecured credit or credit secured by property
4 other than the homestead property, regardless of when the extension
5 of credit is made, may not be conditioned on or otherwise related
6 to an equity loan.

7 (j) Any owner and any spouse of any owner of the homestead
8 property securing an equity loan may, within three days after the
9 equity loan is closed, rescind the equity loan without penalty or
10 charge.

11 (k) An equity loan may close only at an office of the
12 lender, a title company, or an attorney licensed to practice law in
13 this state.

14 (l) A lender or holder of an equity loan shall forfeit all
15 principal and interest of the equity loan, and shall pay reasonable
16 attorney's fees and other costs incurred by the borrower, if the
17 lender fails to comply with this section within a reasonable time
18 after receiving notice of its failure to comply.

19 (m) The principal amount of an equity loan plus the
20 aggregate total of the outstanding balances of other indebtedness
21 secured by valid encumbrances of record against the homestead
22 property may not exceed 75 percent of the fair market value of the
23 homestead property on the date the equity loan is closed. The lien
24 securing the equity loan is valid only if the principal amount of
25 the equity loan plus the aggregate total of the outstanding
26 balances of other indebtedness secured by valid encumbrances of
27 record against the homestead property does not exceed 75 percent of

1 the fair market value of the homestead property on the date the
2 equity loan is closed. Violation of this subsection does not
3 affect the validity of other indebtedness secured by valid
4 encumbrances of record against the homestead property.

5 (n) On default by the borrower on an equity loan, the holder
6 of the loan may not seek recourse against the assets of the
7 borrower, other than the homestead property securing the loan,
8 unless the holder has obtained a judicial foreclosure of the lien
9 securing the loan in a district court of the county in which the
10 homestead property is located. If the holder elects to sell the
11 homestead property under a power of sale conferred by a deed of
12 trust or other contract lien rather than obtain a judicial
13 foreclosure of the lien, the holder shall send the borrower written
14 notice of the default by certified mail. The holder may not give
15 notice of the sale required by statute until the borrower is given
16 at least 30 days after receiving the notice to cure the default,
17 including the day on which the notice is given and the day notice
18 of the sale is given as required by statute.

19 (o) In this section:

20 (1) "Equity loan" means an extension of credit under a
21 written agreement other than an extension of credit under
22 Subsections (a)(1)-(6) of this section that:

23 (A) is secured by a voluntary lien on a
24 homestead or other consensual security interest in a homestead
25 securing payment of a debt in an amount that is not greater than 75
26 percent of the fair market value of the homestead property at the
27 time the equity loan is closed;

1 (B) is created with the consent of each owner
2 and the spouse of each owner;

3 (C) is made by:

4 (i) a bank, savings and loan association,
5 savings bank, or credit union doing business under the laws of this
6 state or the United States;

7 (ii) a federally chartered lending
8 instrumentality or a person approved as a mortgagee by the United
9 States government to make federally insured loans; or

10 (iii) a person licensed to make regulated
11 loans, as provided by statute of this state;

12 (D) is not secured with homestead property
13 encumbered by a prior duly recorded lien securing an equity loan;

14 (E) is not secured by any additional real or
15 personal property, other than the homestead, except for a
16 manufactured home or rents to be derived from the homestead;

17 (F) is scheduled to be repaid in substantially
18 equal successive monthly installments beginning no later than two
19 months after the date the equity loan is closed; and

20 (G) requires each installment under the schedule
21 of payments by the borrower to equal the amount of interest and
22 principal scheduled to accrue as of the date of the installment or
23 that would accrue as of the installment date through amortization
24 of the equity loan.

25 (2) "Close or closing" means, for the purposes of an
26 equity loan, the execution by the borrower of the promissory notes
27 and the security instruments securing the loan.

1 SECTION 2. The following temporary provision is added to the
2 Texas Constitution:

3 TEMPORARY PROVISION. (a) This temporary provision applies
4 to the constitutional amendment proposed by the 75th Legislature,
5 Regular Session, 1997, authorizing a voluntary, consensual
6 encumbrance on homestead property.

7 (b) The constitutional amendment takes effect January 1,
8 1998.

9 (c) This temporary provision takes effect on the adoption of
10 the amendment by the voters and expires January 2, 1998.

11 SECTION 3. This proposed constitutional amendment shall be
12 submitted to the voters at an election to be held November 4, 1997.
13 The ballot shall be printed to permit voting for or against the
14 proposition: "The constitutional amendment extending homeowners'
15 rights to borrow voluntarily against the equity in, and establish a
16 valid lien on, their homesteads according to specific guidelines
17 for purposes in addition to those presently provided for under
18 state law, without affecting homestead tax exemptions or
19 eliminating existing homestead protections against involuntary
20 liens and judgment creditors."

COMMITTEE REPORT

The Honorable James E. "Pete" Laney
Speaker of the House of Representatives

4/17/97
(date)

Sir:

We, your COMMITTEE ON FINANCIAL INSTITUTIONS

to whom was referred HJR 31 have had the same under consideration and beg to report back with the recommendation that it

- ☐ do pass, without amendment.
- ☐ do pass, with amendment(s).
- ☒ do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.
- ☒ yes ☐ no A fiscal note was requested.
- ☐ yes ☒ no A criminal justice policy impact statement was requested.
- ☐ yes ☒ no An equalized educational funding impact statement was requested.
- ☐ yes ☒ no An actuarial analysis was requested.
- ☐ yes ☒ no A water development policy impact statement was requested.
- ☐ yes ☒ no A tax equity note was requested.
- ☐ The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

For Senate Measures: House Sponsor _____

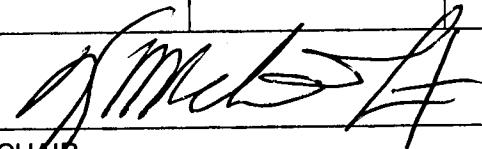
Joint Sponsors: _____ / _____ / _____

Co-Sponsors: _____

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Marchant, Chair	X			
Gutierrez, Vice-chair	X			
Ehrhardt	X			
Elkins	X			
Giddings				X
Grusendorf	X			
Patterson	X			
Smith	X			
Solomons	X			

Total 8 aye
 0 nay
 0 present, not voting
 1 absent


CHAIR

BILL ANALYSIS

FINANCIAL INSTITUTIONS

C.S.H.J.R. 31

By: Patterson, L. P. "Pete"

4-20-97

Committee Report (Substituted)

BACKGROUND

During its course of work in the 75th Legislative session, the Committee on Financial Institutions has reviewed several proposals that would allow voters to choose if they wanted to alter the constitution to allow homestead owners more liberal access to equity in their homesteads. The major proposals have focused on three primary themes: (1) Allowing access to equity through extending credit on a first lien beyond the original purchase money--"cash out refinancing"--and refinancing of retired liens; (2) Allowing second liens with no restrictions relating to purpose, and; (3) Allowing second liens restricted to purpose and with consumer protections, especially regarding foreclosure, included in the constitution. Additional differences included percentage of appraised value available for second liens and refinancing, lines of credit, agriculture use exemptions, and reverse mortgages. While all proposals significantly would change lien law regarding homesteads and would allow consumers to access equity in some fashion, the differences are also significant and are important enough to attempt to address as the legislature focuses on such a major change to a state tradition regarding protection of people's homesteads.

PURPOSE

To allow a voluntary encumbrance against homestead property for the purpose of equity credit, including a first lien refinance mortgage loan, a mortgage loan secured by the home if the property is owned free and clear, or a second lien home equity loan within the restrictions as set forth in this Constitutional amendment.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency or institution.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 50, Article XVI, Texas Constitution by numerating the existing provisions into subsections (a), (b), (c) and creating subsections new subsection a(6), a(7), (d)-(o).

Sec. 50(a)(5). Makes conforming changes to Constitutional language.

Sec 50 (a)(6). Provides for an encumbrance against homestead property for an extension of credit, if the extension meets requirements as set for in Sec. 50, Subsection (d).

Sec. 50 (a)(7). Provides for a voluntary encumbrance against homestead property for an equity loan.

Sec. 50 (b). Makes perfecting changes.

Sec. 50 (d). Provides that the extension of credit is the only debt secured by the homestead; previous debt must be paid or refinanced as a part of the extension of credit.

This makes the extension a first lien. Subsection (d) also provides that a lender may not require a

person to extend credit on a homestead as a condition for receiving credit not associated with the homestead.

Sec. 50 (e). Provides for written notice to be given by the lender to the borrower upon request of an equity loan. Provides language for written notice.

Sec. 50 (f). Provides notice must be signed by both the lender and borrower upon closing of an equity loan and must include a statement of the fair market value of the property.

Sec. 50 (g). Provides that the lender or holder of an equity loan must:

- (1) deliver a copy of the promissory note and all other signed documents to the borrower;
- (2) disclose that the loan is an equity loan; and
- (3) within a reasonable time of repayment of the loan the lender must also:
 - (A) cancel and return the note to the borrower and give the borrower a release of the lien in recordable form; or
 - (B) assign the note and lien to a refinancing lender.

Sec. 50 (h). Provides a lender or holder of an equity loan may not:

- (1) demand payment, accelerate payment or foreclose due to a drop in the fair market value of the homestead unless the decrease is caused by causing by substantial damage or destruction;
- (2) demand payment, accelerate payment, or foreclose because of default on another loan;
- (3) require borrower to apply proceeds from an equity loan to pay off another loan not secured by the homestead;
- (4) accept a borrower's homestead property as collateral for another loan;
- (5) establish a form of open-end credit;
- (6) close the loan before the twelfth day after the lender receives the completed application;
- (7) impose prepayment penalties for advance payments;
- (8) require the borrower to pay over 3% fees to originate, evaluate, maintain, record, insure, or service the loan;
- (9) accept an assignment of wages as security for the loan;
- (10) accept a confession of judgement or power of attorney running to the lender or to a third person to confess judgment or to appear for a borrower in a judicial proceeding; or,
- (11) accept an instrument in which blanks are left to be filled in by the borrower.

Sec. 50 (i). Provides that an equity loan must be a debt secured only by the homestead property, thus a lender may not require any property other than the homestead property as collateral for the loan.

Sec. 50 (j). Provides for a three-day period to rescind the equity loan without penalty.

Sec. 50 (k). Provides for specified allowable locations for closing an equity loan.

Sec. 50 (l). Provides a penalty of forfeiture of principal and interest, and payment of attorney's fees and other costs incurred by the borrower, if the lender or holder of an equity loan fails to comply with this section of the Constitution within a reasonable time after receiving notice of its failure to comply.

Sec. 50 (m). Provides for a 75% loan-to-value cap where the amount of the equity loan plus the total of all other debt against the homestead cannot exceed 75% of the market value of the property. Provides that the lien securing an equity loan shall not be valid in excess of the 75% cap.

Sec. 50 (n). Provides for an election of remedies where the borrower has no personal liability for an equity loan if a lender chooses to pursue a nonjudicial foreclosure upon default. If, upon default, a lender chooses to pursue other assets of a borrower in addition to the homestead

property to repay the debt, the lender must file a lawsuit for judicial foreclosure.

Sec. 50 (o). Defines (1) "equity loan," as an extension of credit, other than under Subsections (a)(1)-(6), that:

- (A) is secured by a voluntary lien on the homestead property where the total debt on the property cannot exceed 75% of the fair market value of the property at the time the loan is closed;
- (B) is created with the consent of each owner and spouse of each owner;
- (C) is made by:
 - (i) a bank, savings and loan, savings bank, or credit union in Texas or the United States;
 - (ii) a federally chartered lending instrumentality or mortgagee approved to make federally insured loans; or
 - (iii) a person licensed to make regulated loans as provided by statute of this state;
- (D) is not secured by property already used to secure an equity loan;
- (E) is not secured by any additional real or personal property, other than the homestead, except for a manufactured home or rents to be derived from the homestead;
- (F) is scheduled to be repaid in monthly payments;
- (G) requires each payment to be amortized.

Sec. 50 (o)(2). Defines "close or closing" as the execution by the borrower of the promissory notes and the security instruments securing the loan.

SECTION 2. (a) Temporary provision added to the Texas Constitution applying to the constitutional amendment proposed by the 75th Legislature, Regular Session, 1997, authorizing a voluntary, consensual encumbrance on homestead property.

(b) The constitutional amendment takes effect January 1, 1998.

(c) The temporary provision takes effect on the adoption of the amendment by the voters and expires January 2, 1998.

SECTION 3. Ballot language and provision for election date.

COMPARISON OF ORIGINAL TO SUBSTITUTE

Whereas HJR 31 as filed allowed for an encumbrance against the homestead property for an extension of credit in the form of a first lien refinance to obtain equity credit, the Committee Substitute to HJR 31 expands this allowance for encumbrances against the homestead property to include second lien home equity loans. The Committee Substitute provides for restrictions on the second lien home equity loans to include a 75% loan-to-value cap, a requirement of written notice to the borrower, an election of remedies in the event of foreclosure, providing for no recourse against the borrower in the event of nonjudicial foreclosures and requiring judicial foreclosure if a lender seeks assets in addition to the property to repay the debt, restrictions against demand of payment in the event of market value decrease, and specifics on allowable locations for the closing of the loan. Furthermore, the Substitute provides for a twelve day cooling off period, a three day period wherein the borrower may rightfully rescind the loan, restrictions against open-end account home equity loans, restrictions against cross collateralization, restrictions against cross default, restrictions against prepayment penalties, and restrictions against additional collateral being required. Finally, the Substitute caps loan fees at 3% of the loan amount, defines authorized lenders, and prohibits balloon payments.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE
75th Regular Session

April 22, 1997

To: Honorable Kenny Marchant, Chair
Committee on Financial Institutions
House
Austin, Texas

IN RE: House Joint Resolution
No. 31, Committee
Report 1st House, Substituted
By: Patterson, L.P. "Pete"

From: John Keel, Director

In response to your request for a Fiscal Note on HJR31 (Proposing a constitutional amendment permitting an encumbrance to be fixed on a homestead for certain extensions of credit.) this office has determined the following:

Biennial Net Impact to General Revenue Funds by HJR31-Committee Report 1st House, Substituted
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Implementing the provisions of the bill would result in a net positive impact of \$357,000 to General Revenue Related Funds through the biennium ending August 31, 1999.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

Fiscal Analysis

The proposed constitutional amendment would permit home equity lending and create a division within the Office of the Consumer Credit Commissioner for the purpose of licensing, examining and verifying compliance of lenders with the provisions of the bill. The Office of the Consumer Credit Commissioner projects that additional examiners will be required to examine an increased number of licensed lenders at an increased cost per examination as a result of the added complexity of the type of examinations conducted. Collected revenues would increase due to the licensure of more regulated lenders, and from fees collected as a result of charges assessed to lenders for examinations.

Methodology

The Office of the Consumer Credit Commissioner's projected revenues of \$1.3 million during the first year of implementation include increased licensing fees resulting from a projected increase in the number of lenders, as well as revenues generated from examinations. The agency will charge a \$150 surcharge per visit, plus \$32 per hour of examination.

The agency projects that the cost of the new division would include 22 additional full time equivalents (FTEs), including 5 examiners, 2 assistant examiners, 3 financial analysts, 2 attorneys, 1 consumer education specialist, and 9 administrative technicians. Salaries are projected at \$740,000 per year. With additional travel and related operating costs, the total costs of operation and staffing is estimated at slightly

over \$1 million dollars per year.

In fiscal year 1998, there would also be the cost of publication for the constitutional amendment to be set before the voters.

The probable fiscal implications of Implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Five Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 0001	Probable Revenue Gain/(Loss) from General Revenue Fund 0001	Change in Number of State Employees from FY 1997
1998	(\$1,148,000)	\$1,256,000	22.0
1999	(1,012,000)	1,261,000	22.0
2000	(1,023,000)	1,261,000	22.0
2001	(1,043,000)	1,261,000	22.0
2002	(1,090,000)	1,316,000	22.0

Net Impact on General Revenue Related Funds:

The probable fiscal implication to General Revenue related funds during each of the first five years is estimated as follows:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
1998	\$108,000
1999	249,000
2000	238,000
2001	218,000
2002	226,000

Similar annual fiscal implications These impacts would continue as long as the provisions of the bill are in effect.

No fiscal implication to units of local government is anticipated.

Source: Agencies:

LBB Staff: JK, TH, JA

LEGISLATIVE BUDGET BOARD

Austin, Texas

**FISCAL NOTE
75th Regular Session**

February 10, 1997

To: Honorable Kenny Marchant, Chair
Committee on Financial Institutions
House
Austin, Texas

IN RE: House Joint Resolution
No. 31
By: Patterson, L.P. "Pete"

From: John Keel, Director

In response to your request for a Fiscal Note on HJR31 (Proposing a constitutional amendment permitting an encumbrance to be fixed on a homestead for certain extensions of credit.) this office has determined the following:

Biennial Net Impact to General Revenue Funds by HJR31-As Introduced
--

No fiscal implication to the State is anticipated, other than the cost of publication. The cost to the state for publication of the resolution is \$71,000.

Similar annual fiscal implications would continue as long as the provisions of the bill are in effect.

No fiscal implication to units of local government is anticipated.

Source: Agencies: 332 Department of Housing and Community Affairs
451 Department of Banking
450 Savings and Loan Department
307 Secretary of State
304 Comptroller of Public Accounts

LBB Staff: JK, TH, JA

WITNESS LIST

HJR 31
HOUSE COMMITTEE REPORT
Financial Institutions Committee

March 24, 1997 - 2:00P

For: Sieperda, Owen (Himself/Assn Dairymen)
Against: Carlson, Pat (Herself)
Flynn, Charlotte (Herself)
Joiner, Gary (Tx Farm Bureau)
Neal, Jerry (Himself)
On: Schneider, Robert (Consumers Union)

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SUMMARY OF COMMITTEE ACTION

HJR 31

February 17, 1997 2:00PM

Referred directly to subcommittee by chair

Subcommittee members named

Solomons - Chair/Smith/Giddings/Gutierrez/Marchant/

March 24, 1997 2:00PM

Considered in public hearing

Recalled from subcommittee

Testimony taken in committee

Left pending in committee

April 17, 1997 10:30AM

Considered in formal meeting

Committee substitute considered in committee

Reported favorably as substituted

ADOPTED *as amended*

MAY 9 1997

Sharon Carter
Chief Clerk
House of Representatives

By ~~Patterson~~

~~H.J.R. No. 31~~

Substitute the following for H.J.R. No. 31:

By ~~Marchant~~

~~C.S. H.J.R. No. 31~~

A JOINT RESOLUTION

proposing a constitutional amendment permitting an encumbrance against homestead property for certain extensions of equity credit.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

amc 1
~~SECTION 1. Section 50, Article XVI, Texas Constitution, is~~

amended to read as follows:

Sec. 50. (a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for:

(1) the purchase money thereof, or a part of such purchase money;

(2) [7] the taxes due thereon;

(3) [7] an owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;

(4) [7] the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner;

(5) [7-or-for] work and material used in constructing improvements thereon, if [and-in-this-last-case-only-when] the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same

1 manner as is required in making a sale and conveyance of the
2 homestead;

3 (6) an extension of credit for any other purpose, if
4 the extension of credit meets the requirements of Subsection (d) of
5 this section; or

6 (7) an equity loan.

7 (b) The [nor-may-the] owner or claimant of the property
8 claimed as homestead, if married, may not sell or abandon the
9 homestead without the consent of the other spouse, given in such
10 manner as may be prescribed by law.

11 (c) No mortgage, trust deed, or other lien on the homestead
12 shall ever be valid, except for a debt described by this section,
13 whether such mortgage, or trust deed, or other lien, shall have
14 been created by the owner alone, or together with his or her
15 spouse, in case the owner is married. All pretended sales of the
16 homestead involving any condition of defeasance shall be void. A
17 purchaser or lender for value without actual knowledge may
18 conclusively rely on an affidavit that designates other property as
19 the homestead of the affiant and that states that the property to
20 be conveyed or encumbered is not the homestead of the affiant.

21 (d) An extension of credit under Subsection (a)(6) of this
22 section must be the only debt secured by the homestead. Any prior
23 debt secured by the homestead must be paid in full before the
24 extension of credit under Subsection (a)(6) of this section or
25 refinanced as part of the extension of credit under Subsection
26 (a)(6) of this section. A lender may not require as a condition on
27 an extension of credit under Subsection (a)(6) of this section that

1 the proceeds of the extension of credit be used for a particular
2 purpose.

3 (e) At the time the homestead owner first requests a lender
4 to make an equity loan under Subsection (a)(7) of this section, the
5 lender of an equity loan must provide to the owner the following
6 written notice in conspicuous bold capitalized type:

7 "YOU ARE PLEDGING YOUR HOMESTEAD AS COLLATERAL TO SECURE
8 PAYMENT OF A LOAN. IF YOU DO NOT REPAY THE LOAN OR IF YOU FAIL TO
9 MEET THE TERMS OF THE LOAN, THE LENDER MAY FORECLOSE AND SELL YOUR
10 HOME. THE LENDER MUST GIVE YOU A COPY OF ALL DOCUMENTS YOU SIGN.
11 WHEN YOU PAY THE LOAN IN FULL, THE LENDER MUST CANCEL AND RETURN
12 THE NOTE TO YOU OR ASSIGN IT TO THE PERSON PAYING OFF THE LOAN."

13 "THE LENDER MAY NOT: (1) DEMAND THAT YOU PAY OFF THE LOAN
14 EARLIER THAN YOU AGREED IF THE FAIR MARKET VALUE OF YOUR HOME
15 DECREASES, UNLESS THE DECREASE IS CAUSED BY SUBSTANTIAL DAMAGE OR
16 DESTRUCTION TO THE HOMESTEAD PROPERTY, INCLUDING A CONDEMNATION OR
17 OTHER TAKING; OR IF YOU DO NOT PAY SOME OTHER LOAN THAT IS NOT
18 SECURED BY YOUR HOME; (2) SEEK RECOURSE AGAINST YOU OR TAKE ANY
19 ASSETS OTHER THAN YOUR HOME IF YOU DO NOT REPAY THE LOAN OR MEET
20 THE TERMS OF THE LOAN, UNLESS THE LENDER HAS ELECTED TO SEEK
21 JUDICIAL FORECLOSURE AND THE COURT HAS ISSUED AN ORDER ALLOWING USE
22 OF THOSE OTHER ASSETS TO SATISFY THE DEBT; (3) ESTABLISH AN
23 OPEN-END ACCOUNT TO ACCESS THE LOAN; (4) REQUIRE THAT YOU USE THE
24 LOAN TO PAY OFF ANOTHER LOAN THAT IS NOT SECURED BY YOUR HOME; (5)
25 CLOSE BEFORE 12 DAYS AFTER YOU APPLIED FOR THE LOAN; (6) CHARGE YOU
26 A PENALTY IF YOU REPAY THE LOAN IN ADVANCE; (7) REQUIRE YOU TO PAY
27 FEES, OTHER THAN INTEREST, THAT EXCEED, IN THE AGGREGATE, THREE

1 PERCENT OF THE LOAN AMOUNT; (8) ACCEPT AN ASSIGNMENT OF WAGES AS
2 SECURITY FOR THE LOAN; (9) ACCEPT A CONFESSION OF JUDGMENT OR POWER
3 OF ATTORNEY TO APPEAR FOR YOU AT A JUDICIAL PROCEEDING; OR (10)
4 ACCEPT AN INSTRUMENT THAT YOU HAVE SIGNED THAT HAS BLANKS LEFT TO
5 BE FILLED IN."

6 "IF YOU CHANGE YOUR MIND ABOUT THIS LOAN, YOU HAVE AT LEAST
7 THREE DAYS AFTER YOU SIGN THE LOAN DOCUMENTS TO NOTIFY THE LENDER
8 THAT YOU HAVE CHANGED YOUR MIND AND YOU WILL HAVE NO FURTHER
9 OBLIGATION TO THE LENDER. THIS LOAN MAY BE CLOSED ONLY AT THE
10 OFFICE OF THE LENDER, A TITLE COMPANY, OR AN ATTORNEY. THE LENDER
11 MAY FORFEIT THE RIGHT TO COLLECT THE LOAN IF THE LENDER DOES NOT
12 COMPLY WITH THE LAW GOVERNING EQUITY LOANS."

13 "THIS LOAN MAY BE MADE ONLY WITH THE VOLUNTARY CONSENT OF
14 EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE. THIS LOAN
15 MAY ONLY BE MADE BY A LAWFULLY
16 AUTHORIZED LENDER. THIS LOAN MAY NOT BE SECURED BY YOUR HOME IF:
17 (1) YOUR HOME IS SECURITY FOR ANOTHER EQUITY LOAN; OR (2) IF THE
18 LOAN IS TO BE SECURED WITH PROPERTY OTHER THAN YOUR HOME. ALL THE
19 DEBTS AGAINST YOUR HOME, INCLUDING THE EQUITY LOAN, MAY NOT EXCEED
20 75 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME AT THE TIME YOU
21 CLOSE THIS LOAN. THE LOAN MUST BE SCHEDULED TO BE REPAYED IN
22 SUBSTANTIALLY EQUAL MONTHLY INSTALLMENTS BEGINNING NO LATER THAN
23 TWO MONTHS FROM THE DATE PRINCIPAL IS ADVANCED, AND THE PAYMENTS
24 MUST COVER, AT A MINIMUM, THE INTEREST AND PRINCIPAL ACCRUED IN THE
25 PAYMENT PERIOD."

26 (f) The notice must be signed by the lender and the borrower
27 at the closing of the equity loan and must include a statement of

1 the fair market value of the homestead property at the time of
2 closing.

3 (g) A lender or any holder of an equity loan must:

4 (1) deliver to the borrower a copy of the promissory
5 note and all other documents signed by the borrower related to the
6 equity loan;

7 (2) disclose in any mortgage, deed of trust, security
8 instrument, or other instrument securing the loan that the loan is
9 an equity loan made under the authority of this section; and

10 (3) within a reasonable time after termination and
11 full payment of the equity loan:

12 (A) cancel and return the note to the borrower
13 and give the borrower a release in recordable form of any mortgage,
14 deed of trust, security instrument, or other instrument securing
15 the loan; or

16 (B) endorse the note and assign any mortgage,
17 deed of trust, or other security instrument to a lender that is
18 refinancing the loan and advancing funds to discharge the equity
19 loan indebtedness at the request of the borrower and in renewal and
20 extension of the security instrument.

21 (h) A lender or any holder of an equity loan may not:

22 (1) demand payment, accelerate the remaining payments,
23 or foreclose any lien securing payment of an equity loan because of
24 a decrease in the fair market value of the homestead, unless the
25 decrease is caused by substantial damage or destruction to the
26 homestead property, including a condemnation or other taking;

27 (2) demand payment, accelerate the remaining payments,

1 or foreclose any lien securing payment of an equity loan because of
2 the borrower's default under any other indebtedness not secured by
3 a prior valid encumbrance on the homestead;

4 (3) require or compel the borrower to apply the
5 proceeds of the equity loan to repay another debt that is not
6 secured by the homestead;

7 (4) require, compel, or accept a borrower's homestead
8 as collateral on a debt not described by Subsection (a) of this
9 section;

10 (5) establish a form of open-end account or other
11 nondeterminate principal amount or indefinite term of loan that may
12 be debited or under which credit may be extended from time to time;

13 (6) close the equity loan before the 12th day after
14 the date the lender receives a completed application for the equity
15 loan;

16 (7) impose a prepayment penalty or other charge for
17 advance payments made by the borrower;

18 (8) require the borrower to pay, in addition to any
19 interest, fees to the lender or any other person that are necessary
20 to originate, evaluate, maintain, record, insure, or service the
21 loan that exceed, in the aggregate, three percent of the original
22 principal amount of the equity loan;

23 (9) accept an assignment or wages as security for the
24 loan;

25 (10) accept a confession of judgment or power of
26 attorney running to the lender or to a third person to confess
27 judgment or to appear for a borrower in a judicial proceeding; or

1 (11) accept an instrument in which blanks are left to
2 be filled in by the borrower.

3 (i) An equity loan must be a debt secured only by the
4 homestead property. Unsecured credit or credit secured by property
5 other than the homestead property, regardless of when the extension
6 of credit is made, may not be conditioned on or otherwise related
7 to an equity loan.

8 (j) Any owner and any spouse of any owner of the homestead
9 property securing an equity loan may, within three days after the
10 equity loan is closed, rescind the equity loan without penalty or
11 charge.

12 (k) An equity loan may close only at an office of the
13 lender, a title company, or an attorney licensed to practice law in
14 this state.

15 (l) A lender or holder of an equity loan shall forfeit all
16 principal and interest of the equity loan, and shall pay reasonable
17 attorney's fees and other costs incurred by the borrower, if the
18 lender fails to comply with this section within a reasonable time
19 after receiving notice of its failure to comply.

20 (m) The principal amount of an equity loan plus the
21 aggregate total of the outstanding balances of other indebtedness
22 secured by valid encumbrances of record against the homestead
23 property may not exceed 75 percent of the fair market value of the
24 homestead property on the date the equity loan is closed. The lien
25 securing the equity loan is valid only if the principal amount of
26 the equity loan plus the aggregate total of the outstanding
27 balances of other indebtedness secured by valid encumbrances of

1 record against the homestead property does not exceed 75 percent of
2 the fair market value of the homestead property on the date the
3 equity loan is closed. Violation of this subsection does not
4 affect the validity of other indebtedness secured by valid
5 encumbrances of record against the homestead property.

6 (n) On default by the borrower on an equity loan, the holder
7 of the loan may not seek recourse against the assets of the
8 borrower, other than the homestead property securing the loan,
9 unless the holder has obtained a judicial foreclosure of the lien
10 securing the loan in a district court of the county in which the
11 homestead property is located. If the holder elects to sell the
12 homestead property under a power of sale conferred by a deed of
13 trust or other contract lien rather than obtain a judicial
14 foreclosure of the lien, the holder shall send the borrower written
15 notice of the default by certified mail. The holder may not give
16 notice of the sale required by statute until the borrower is given
17 at least 30 days after receiving the notice to cure the default,
18 including the day on which the notice is given and the day notice
19 of the sale is given as required by statute.

20 (o) In this section:

21 (1) "Equity loan" means an extension of credit under a
22 written agreement other than an extension of credit under
23 Subsections (a)(1)-(6) of this section that:

24 (A) is secured by a voluntary lien on a
25 homestead or other consensual security interest in a homestead
26 securing payment of a debt in an amount that is not greater than 75
27 percent of the fair market value of the homestead property at the

1 time the equity loan is closed;

2 (B) is created with the consent of each owner
3 and the spouse of each owner;

4 (C) is made by:

5 (i) a bank, savings and loan association,
6 savings bank, or credit union doing business under the laws of this
7 state or the United States;

8 (ii) a federally chartered lending
9 instrumentality or a person approved as a mortgagee by the United
10 States government to make federally insured loans; or

11 (iii) a person licensed to make regulated
12 loans, as provided by statute of this state;

13 (D) is not secured with homestead property
14 encumbered by a prior duly recorded lien securing an equity loan;

15 (E) is not secured by any additional real or
16 personal property, other than the homestead, except for a
17 manufactured home or rents to be derived from the homestead;

18 (F) is scheduled to be repaid in substantially
19 equal successive monthly installments beginning no later than two
20 months after the date the equity loan is closed; and

21 (G) requires each installment under the schedule
22 of payments by the borrower to equal the amount of interest and
23 principal scheduled to accrue as of the date of the installment or
24 that would accrue as of the installment date through amortization
25 of the equity loan.

26 (2) "Close or closing" means, for the purposes of an
27 equity loan, the execution by the borrower of the promissory notes

1 and the security instruments securing the loan.

2 SECTION 2. The following temporary provision is added to the
3 Texas Constitution:

4 TEMPORARY PROVISION. (a) This temporary provision applies
5 to the constitutional amendment proposed by the 75th Legislature,
6 Regular Session, 1997, authorizing a voluntary, consensual
7 encumbrance on homestead property.

8 (b) The constitutional amendment takes effect January 1,
9 1998.

10 (c) This temporary provision takes effect on the adoption of
11 the amendment by the voters and expires January 2, 1998.

12 SECTION 3. This proposed constitutional amendment shall be
13 submitted to the voters at an election to be held November 4, 1997.
14 The ballot shall be printed to permit voting for or against the
15 proposition: "The constitutional amendment extending homeowners'
16 rights to borrow voluntarily against the equity in, and establish a
17 valid lien on, their homesteads according to specific guidelines
18 for purposes in addition to those presently provided for under
19 state law, without affecting homestead tax exemptions or
20 eliminating existing homestead protections against involuntary
21 liens and judgment creditors."

LIST OF HOUSE AMENDMENTS CURRENTLY UNDER CONSIDERATION

HJR31-Second Reading

<u>AMENDMENT#</u>	<u>AUTHOR</u>	<u>DESCRIPTION</u>	<u>ACTION</u>
1	Wolens	Amendment	Adopted -
2	Wolens	Amdt to Amdt	Adopted -
3	Marchant	Amdt to Amdt	Tabled
4	Grusendorf	Amdt to Amdt	Tabled
5	Place	Amdt to Amdt	Failed
6	Staples	Amdt to Amdt	Tabled
7	Elkins	Amdt to Amdt	Withdrawn
8	Rangel	Amdt to Amdt	Adopted -
9	Hochberg	Amdt to Amdt	Adopted -
10	Elkins	Amdt to Amdt	Tabled
11	Chavez	Amdt to Amdt	Withdrawn
12	Place	Amdt to Amdt	Tabled
13	Chavez	Amdt to Amdt	Adopted -



ADOPTED

MAY 19 1987

Sharon Carter
Chief Clerk
House of Representatives

as amended

SB
(H)

BA

FLOOR AMENDMENT NO.

①

BY

Amend C.S.H.J.R. No. 31 by striking everything below the resolving clause and substituting the following:

SECTION 1. Section 50, Article XVI, Texas Constitution, is amended to read as follows:

Sec. 50. (a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for:

(1) the purchase money thereof, or a part of such purchase money; (7)

(2) the taxes due thereon; (7)

(3) an owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding; (7)

(4) the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner;

(5) ~~work and material used in constructing improvements thereon, if [and in this last case only when] the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the~~

1 homestead; or

2 GG (6) an extension of credit that:

3 GGG (A) is secured by a voluntary lien on the
4 homestead created under a written agreement with the consent of
5 each owner and each owner's spouse;

6 (B) is of a principal amount that when added to
7 the aggregate total of the outstanding principal balances of all
8 other indebtedness secured by valid encumbrances of record
9 against the homestead does not exceed 75 percent of the fair
10 market value of the homestead on the date the extension of credit
11 is made;

12 (C) is without recourse for personal liability
13 against each owner and the spouse of each owner;

14 (D) is secured by a lien that may be foreclosed
15 upon only by a court order;

16 (E) does not require the owner or the owner's
17 spouse to pay, in addition to any interest, fees to any person
18 that are necessary to originate, evaluate, maintain, record,
19 insure, or service the extension of credit that exceed, in the
20 aggregate, three percent of the original principal amount of the
21 extension of credit;

22 (F) is not a form of open-end account that may be
23 debited from time to time or under which credit may be extended
24 from time to time, unless the extension of credit is a reverse
25 mortgage;

26 (G) is payable in advance without penalty or
27 other charge;

1 ~~CCC~~ (H) is not secured by any additional real or
2 personal property other than the homestead;

3 (I) is not secured by homestead property
4 designated for agricultural use as provided by statutes governing
5 property tax;

6 (J) may not be accelerated because of a decrease
7 in the market value of the homestead or because of the owner's
8 default under other indebtedness not secured by a prior valid
9 encumbrance against the homestead;

10 (K) is the only debt secured by the homestead at
11 the time the extension of credit is made unless the other debt
12 was made for a purpose described by Subsections (a) (1) - (a) (5) of
13 this section;

14 (L) is, unless the extension of credit is a
15 reverse mortgage, scheduled to be repaid in substantially equal
16 successive monthly installments beginning no later than two
17 months from the date the extension of credit is made, each of
18 which equals or exceeds the amount of accrued interest as of the
19 date of the scheduled installment;

20 (M) is closed not before:

21 ~~CCCC~~ (i) the 12th day after the later of the date
22 that the owner of the homestead submits an application to the
23 lender for the extension of credit or the date that the lender
24 provides the owner a copy of the notice prescribed by Subsection
25 (g) of this section; and

26 (ii) the first anniversary of the closing
27 date of any other extension of credit described by Subsection

✓
1 (a) (6) of this section secured by the same homestead property;

2 GGG (N) is closed only at the office of the lender,
3 an attorney at law, or a title company;

4 (O) is made by: *((insert 5))*

5 GGGG (i) a bank, savings and loan association,
6 savings bank, or credit union doing business under the laws of
7 this state or the United States;

8 (ii) a federally chartered lending
9 instrumentality or a person approved as a mortgagee by the United
10 States government to make federally insured loans; or

11 (iii) a person licensed to make regulated
12 loans, as provided by statute of this state; and

13 GGG (P) is made on the condition that:

14 GGGG (i) the owner of the homestead is not
15 required to apply the proceeds of the extension of credit to
16 ~~repay another debt that is not secured by the homestead or~~
17 ~~another debt to the lender;~~ *e*

18 (ii) the owner of the homestead not assign
19 wages as security for the extension of credit;

20 (iii) the owner of the homestead not sign any
21 instrument in which blanks are left to be filled in;

22 (iv) the owner of the homestead not sign a
23 confession or judgment or power of attorney to the lender or to a
24 third person to confess judgment or to appear for the owner in a
25 judicial proceeding;

26 (v) the lender, at the time the extension of
27 credit is made, provide the owner of the homestead a copy of all

1 documents signed by the owner related to the extension of credit;

2 CCCC (vi) the security instruments securing the
3 extension of credit contain a disclosure that the extension of
4 credit is the type of credit defined by Section 50(a)(6), Article
5 XVI, Texas Constitution;

6 (vii) within a reasonable time after
7 termination and full payment of the extension of credit, the
8 lender cancel and return the promissory note to the owner of the
9 homestead and give the owner, in recordable form, a release of
10 the lien securing the extension of credit or a copy of an
11 endorsement and assignment of the lien to a lender that is
12 refinancing the extension of credit;

13 (viii) the owner of the homestead and any
14 spouse of the owner may, within three days after the extension of
15 credit is made, rescind the extension of credit without penalty
16 or charge;

17 (ix) the owner of the homestead and the
18 lender sign a written acknowledgment as to the fair market value
19 of the homestead property on the date the extension of credit is
20 made; and

21 (x) the lender or any holder of the note for
22 the extension of credit shall forfeit all principal and interest
23 of the extension of credit if the lender fails to comply with the
24 lender's obligations under the extension of credit within a
25 reasonable time after the lender is notified of its failure to
26 comply.

27 G (b) An [nor may the] owner or claimant of the property

1 claimed as homestead may not [~~if married~~] sell or abandon the
2 homestead without the consent of each owner and the [~~other~~]
3 spouse of each owner, given in such manner as may be prescribed
4 by law.

5 G (c) No mortgage, trust deed, or other lien on the homestead
6 shall ever be valid unless it secures a debt described by this
7 section, [~~except for a debt described by this section~~] whether
8 such mortgage, [~~or~~] trust deed, or other lien, shall have been
9 created by the owner alone, or together with his or her spouse,
10 in case the owner is married. All pretended sales of the
11 homestead involving any condition of defeasance shall be void.

12 (d) A purchaser or lender for value without actual
13 knowledge may conclusively rely on an affidavit that designates
14 other property as the homestead of the affiant and that states
15 that the property to be conveyed or encumbered is not the
16 homestead of the affiant.

17 (e) A refinance of debt secured by a homestead and
18 described by any subsection under Subsection ⁵(a)(1)-(a)(5) that
19 includes the advance of additional funds may not be secured by a
20 valid lien against the homestead unless:

21 GG (1) the refinance of the debt is an extension of credit
22 described by Subsection (a)(6) of this section; or

23 (2) the advance of all the additional funds is for
24 reasonable costs necessary to refinance such debt or for a
25 purpose described by Subsection (a)(2), (a)(3), or (a)(5) of this
26 section.

27 G (f) A refinance of debt secured by the homestead, any

portion of which is an extension of credit described by Subsection (a)(6) of this section, may not be secured by a valid lien against the homestead unless the refinance of the debt is an extension of credit described by Subsection (a)(6) of this section.

(g) An extension of credit described by Subsection (a)(6) of this section may be secured by a valid lien against homestead property if the extension of credit is not closed before the 12th day ~~before~~ ^{after} the lender provides the owner with the following written notice on a separate instrument:

"NOTICE CONCERNING EXTENSIONS OF CREDIT

DEFINED BY SEC 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

"SEC 50(a)(6) OF THE TEXAS CONSTITUTION ALLOWS CERTAIN
LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME. SUCH LOANS
ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY THE LOAN
OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY
FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

4. "(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT
OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;

9 "(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE
MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL
BALANCES OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 75%
OF THE FAIR MARKET VALUE OF YOUR HOME;

C "(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY
AGAINST YOU AND YOUR SPOUSE;

4 "(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY
WITH A COURT ORDER;

1 G (E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3% OF ✓
2 THE LOAN AMOUNT;

3 G (F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE
4 DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED
5 FROM TIME TO TIME, UNLESS THE LOAN IS A REVERSE MORTGAGE;

6 G (G) YOU MAY PRE-PAY THE LOAN WITHOUT PENALTY OR CHARGE;

7 G (H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

8 G (I) THE LOAN MAY NOT BE SECURED BY AGRICULTURAL HOMESTEAD
9 PROPERTY;

10 G (J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN
11 AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME
12 DECREASES OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT
13 SECURED BY YOUR HOME;

14 G (K) ONLY ONE LOAN DESCRIBED BY SEC ^{TION} 50(a)(6) ^{ARTICLE XVI,} OF THE ^{TEXAS}
15 CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY GIVEN TIME;

16 G (L) THE LOAN MUST BE SCHEDULED TO BE REPAYED IN PAYMENTS
17 THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH
18 PAYMENT PERIOD, UNLESS THE LOAN IS A REVERSE MORTGAGE;

19 G (M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT
20 A WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU
21 RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; ✓ AND IF YOUR HOME
22 WAS SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A
23 NEW LOAN SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE
24 YEAR HAS PASSED FROM THE CLOSING DATE OF THE OTHER LOAN;

25 G (N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER,
26 TITLE COMPANY, OR AN ATTORNEY AT LAW;

27 G (O) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS

DJS/S

ARTICLE XVI,

TION

TEXAS

DESCRIBED BY SEC 50(a)(6) OF THE CONSTITUTION; AND

"(P) LOANS DESCRIBED BY SEC 50(a)(6) OF THE CONSTITUTION MUST:

"(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER DEBT THAT IS NOT SECURED BY YOUR HOME OR TO ANOTHER DEBT TO THE SAME LENDER;

"(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

"(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH HAVE BLANKS LEFT TO BE FILLED IN;

"(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

"(5) PROVIDE THAT YOU RECEIVE A COPY OF ALL DOCUMENTS YOU SIGN AT CLOSING;

"(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SEC 50(a)(6) OF THE TEXAS CONSTITUTION;

"(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF THE LIEN, WHICHEVER IS APPROPRIATE;

"(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

"(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSES; AND

"(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE LENDER'S OBLIGATIONS."

(h) Subsection (a)(6) and Subsections (e)-(g) of this

1 section are not severable, and none of those provisions would
2 have been enacted without the others. If any of those provisions
3 ^{are} is held to be preempted by the laws of the United States, all of
4 those provisions are invalid. This subsection shall not apply to
5 any lien or extension of credit made after January 1, 1998, and
6 before the date any provision under Subsection (a)(6) or
7 Subsections (e)-(g) is held to be preempted.

8 SECTION 2. The following temporary provision is added to the
9 Texas Constitution:

10 TEMPORARY PROVISION. (a) This temporary provision applies to
11 the constitutional amendment proposed by the 75th Legislature,
12 Regular Session, 1997, authorizing a voluntary consensual
13 encumbrance on homestead property.

14 (b) The constitutional amendment takes effect January 1,
15 1998.

16 (c) This temporary provision takes effect on the adoption
17 of the amendment by the voters and expires January 2, 1998.

18 SECTION 3. This proposed constitutional amendment shall
19 be submitted to the voters at an election to be held November 4,
20 1997. The ballot shall be printed to permit voting for or against
21 the proposition: "The amendment to the Texas Constitution
22 expanding the types of liens for home equity loans that a lender,
23 with the homeowner's consent, may place against a homestead."

(((insert 1 end
here)))



ADOPTED

MAY 9 1997

Sharon Carter
Chief Clerk
House of Representatives

97 MAY -9 AM 9:05

HOUSE OF REPRESENTATIVES

FLOOR AMENDMENT NO.

(2)

BY

Wolens

Amend the proposed floor substitute to C.S.H.J.R. 31 as

follows:

(1) On page 4, strike lines 16-17, and substitute "repay
another debt except debt secured by the homestead or debt to
another lender;"

(2) On page 7, line 9, strike "before" and substitute
"after".

ADOPTED

MAY - 9 1997

Sharon Carter
Chief Clerk
House of Representatives

ADOPTED

MAY - 9/1997

Sharon Carter
Chief Clerk
House of Representatives

SB
CU



FLOOR AMENDMENT NO.

8

BY

Rangel

Amend the Wolens Amendment to,
Amend CS H.J.R. 31 as follows:

- 1 (X) On page 9, line 26, after the period insert: If the
- 2 discussions with the borrower are conducted primarily in a
- 3 language other than English, the lender shall, before closing,
- 4 provide an additional copy of the notice translated into the
- 5 written language in which the discussions were conducted.

sm/ins 3

111 3 111

ADOPTED

MAY - 9/1997

Sharon Carter
Chief Clerk
House of Representatives

OK JJ



BA

ADOPTED

MAY - 9 1997

Sharon Carter
Chief Clerk
House of Representatives

SE

BY Harberg

FLOOR AMENDMENT NO.

9

~~X~~ Amend the Wolens amendment to C.S.H.J.R. No. 31 on page 10,
between lines 7 and 8, by inserting the following:

- 1 (i) The advances made on a reverse mortgage loan under which
- 2 more than one advance is made must be made at regular intervals
- 3 according to a plan established by the original loan agreement.

3m/ins4

III insert 4

ADOPTED

MAY - 9 1997

Sharon Carter
Chief Clerk
House of Representatives



ADOPTED

MAY - 9 1997

Sharon Carter
Chief Clerk
House of Representatives

BA

FLOOR AMENDMENT NO. (13)

BY Chavez

1 Amend the Wolens amendment to C.S.H.J.R. No. 31 as follow:

2 ~~(2)~~ On page 4, line 4, between "by" and the colon, insert:

3 one of the following that has not been found by a federal
4 regulatory agency to have engaged in the practice of refusing to
5 make loans because the applicants for the loans reside or the
6 property proposed to secure the loans is located in a certain area

sm/ins5

(11, 1111 + 5) 1111

ADOPTED

MAY - 9 1997

Sharon Carter
Chief Clerk
House of Representatives

2ND READING
ENGROSSMENT

By Patterson, Marchant, Danburg, Rabuck,
Solomons, et al.

H.J.R. No. 31

A JOINT RESOLUTION

proposing a constitutional amendment permitting an encumbrance
against homestead property for certain extensions of equity credit.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 50, Article XVI, Texas Constitution, is
amended to read as follows:

Sec. 50. (a) The homestead of a family, or of a single
adult person, shall be, and is hereby protected from forced sale,
for the payment of all debts except for:

(1) the purchase money thereof, or a part of such
purchase money;

(2) ~~[7]~~ the taxes due thereon;

(3) ~~[7]~~ an owelty of partition imposed against the
entirety of the property by a court order or by a written agreement
of the parties to the partition, including a debt of one spouse in
favor of the other spouse resulting from a division or an award of
a family homestead in a divorce proceeding;

(4) ~~[7]~~ the refinance of a lien against a homestead,
including a federal tax lien resulting from the tax debt of both
spouses, if the homestead is a family homestead, or from the tax
debt of the owner;

(5) ~~[7--or-for]~~ work and material used in constructing
improvements thereon, if ~~[and-in-this-last-case-only-when]~~ the work
and material are contracted for in writing, with the consent of

1 both spouses, in the case of a family homestead, given in the same
2 manner as is required in making a sale and conveyance of the
3 homestead; or

4 (6) an extension of credit that:

5 (A) is secured by a voluntary lien on the
6 homestead created under a written agreement with the consent of
7 each owner and each owner's spouse;

8 (B) is of a principal amount that when added to
9 the aggregate total of the outstanding principal balances of all
10 other indebtedness secured by valid encumbrances of record against
11 the homestead does not exceed 75 percent of the fair market value
12 of the homestead on the date the extension of credit is made;

13 (C) is without recourse for personal liability
14 against each owner and the spouse of each owner;

15 (D) is secured by a lien that may be foreclosed
16 upon only by a court order;

17 (E) does not require the owner or the owner's
18 spouse to pay, in addition to any interest, fees to any person that
19 are necessary to originate, evaluate, maintain, record, insure, or
20 service the extension of credit that exceed, in the aggregate,
21 three percent of the original principal amount of the extension of
22 credit;

23 (F) is not a form of open-end account that may
24 be debited from time to time or under which credit may be extended
25 from time to time, unless the extension of credit is a reverse
26 mortgage;

27 (G) is payable in advance without penalty or

1 other charge;

2 (H) is not secured by any additional real or
3 personal property other than the homestead;

4 (I) is not secured by homestead property
5 designated for agricultural use as provided by statutes governing
6 property tax;

7 (J) may not be accelerated because of a decrease
8 in the market value of the homestead or because of the owner's
9 default under other indebtedness not secured by a prior valid
10 encumbrance against the homestead;

11 (K) is the only debt secured by the homestead at
12 the time the extension of credit is made unless the other debt was
13 made for a purpose described by Subsections (a)(1)-(a)(5) of this
14 section;

15 (L) is, unless the extension of credit is a
16 reverse mortgage, scheduled to be repaid in substantially equal
17 successive monthly installments beginning no later than two months
18 from the date the extension of credit is made, each of which equals
19 or exceeds the amount of accrued interest as of the date of the
20 scheduled installment;

21 (M) is closed not before:

22 (i) the 12th day after the later of the
23 date that the owner of the homestead submits an application to the
24 lender for the extension of credit or the date that the lender
25 provides the owner a copy of the notice prescribed by Subsection
26 (g) of this section; and

27 (ii) the first anniversary of the closing

1 date of any other extension of credit described by Subsection
2 (a)(6) of this section secured by the same homestead property;

3 (N) is closed only at the office of the lender,
4 an attorney at law, or a title company;

5 (O) is made by one of the following that has not
6 been found by a federal regulatory agency to have engaged in the
7 practice of refusing to make loans because the applicants for the
8 loans reside or the property proposed to secure the loans is
9 located in a certain area:

10 (i) a bank, savings and loan association,
11 savings bank, or credit union doing business under the laws of this
12 state or the United States;

13 (ii) a federally chartered lending
14 instrumentality or a person approved as a mortgagee by the United
15 States government to make federally insured loans; or

16 (iii) a person licensed to make regulated
17 loans, as provided by statute of this state; and

18 (P) is made on the condition that:

19 (i) the owner of the homestead is not
20 required to apply the proceeds of the extension of credit to repay
21 another debt except debt secured by the homestead or debt to
22 another lender;

23 (ii) the owner of the homestead not assign
24 wages as security for the extension of credit;

25 (iii) the owner of the homestead not sign
26 any instrument in which blanks are left to be filled in;

27 (iv) the owner of the homestead not sign a

1 confession or judgment or power of attorney to the lender or to a
2 third person to confess judgment or to appear for the owner in a
3 judicial proceeding;

4 (v) the lender, at the time the extension
5 of credit is made, provide the owner of the homestead a copy of all
6 documents signed by the owner related to the extension of credit;

7 (vi) the security instruments securing the
8 extension of credit contain a disclosure that the extension of
9 credit is the type of credit defined by Section 50(a)(6), Article
10 XVI, Texas Constitution;

11 (vii) within a reasonable time after
12 termination and full payment of the extension of credit, the lender
13 cancel and return the promissory note to the owner of the homestead
14 and give the owner, in recordable form, a release of the lien
15 securing the extension of credit or a copy of an endorsement and
16 assignment of the lien to a lender that is refinancing the
17 extension of credit;

18 (viii) the owner of the homestead and any
19 spouse of the owner may, within three days after the extension of
20 credit is made, rescind the extension of credit without penalty or
21 charge;

22 (ix) the owner of the homestead and the
23 lender sign a written acknowledgment as to the fair market value of
24 the homestead property on the date the extension of credit is made;
25 and

26 (x) the lender or any holder of the note
27 for the extension of credit shall forfeit all principal and

1 interest of the extension of credit if the lender fails to comply
2 with the lender's obligations under the extension of credit within
3 a reasonable time after the lender is notified of its failure to
4 comply.

5 (b) An ~~[nor--may--the]~~ owner or claimant of the property
6 claimed as homestead may not ~~[7--if-married7]~~ sell or abandon the
7 homestead without the consent of each owner and the ~~[other]~~ spouse
8 of each owner, given in such manner as may be prescribed by law.

9 (c) No mortgage, trust deed, or other lien on the homestead
10 shall ever be valid unless it secures a debt described by this
11 section, ~~[except-for-a-debt-described--by--this--section7]~~ whether
12 such mortgage, ~~[or]~~ trust deed, or other lien, shall have been
13 created by the owner alone, or together with his or her spouse, in
14 case the owner is married. All pretended sales of the homestead
15 involving any condition of defeasance shall be void.

16 (d) A purchaser or lender for value without actual knowledge
17 may conclusively rely on an affidavit that designates other
18 property as the homestead of the affiant and that states that the
19 property to be conveyed or encumbered is not the homestead of the
20 affiant.

21 (e) A refinance of debt secured by a homestead and described
22 by any subsection under Subsections (a)(1)-(a)(5) that includes the
23 advance of additional funds may not be secured by a valid lien
24 against the homestead unless:

25 (1) the refinance of the debt is an extension of
26 credit described by Subsection (a)(6) of this section; or

27 (2) the advance of all the additional funds is for

1 reasonable costs necessary to refinance such debt or for a purpose
2 described by Subsection (a)(2), (a)(3), or (a)(5) of this section.

3 (f) A refinance of debt secured by the homestead, any
4 portion of which is an extension of credit described by Subsection
5 (a)(6) of this section, may not be secured by a valid lien against
6 the homestead unless the refinance of the debt is an extension of
7 credit described by Subsection (a)(6) of this section.

8 (g) An extension of credit described by Subsection (a)(6)
9 of this section may be secured by a valid lien against homestead
10 property if the extension of credit is not closed before the 12th
11 day after the lender provides the owner with the following written
12 notice on a separate instrument:

13 "NOTICE CONCERNING EXTENSIONS OF CREDIT

14 DEFINED BY SECTION 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

15 "SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION
16 ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME.
17 SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY
18 THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER
19 MAY FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

20 "(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT
21 OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;

22 "(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE
23 MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL
24 BALANCES OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 75% OF
25 THE FAIR MARKET VALUE OF YOUR HOME;

26 "(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL
27 LIABILITY AGAINST YOU AND YOUR SPOUSE;

1 "(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY
2 WITH A COURT ORDER;

3 "(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3% OF
4 THE LOAN AMOUNT;

5 "(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE
6 DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED
7 FROM TIME TO TIME, UNLESS THE LOAN IS A REVERSE MORTGAGE;

8 "(G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;

9 "(H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

10 "(I) THE LOAN MAY NOT BE SECURED BY AGRICULTURAL HOMESTEAD
11 PROPERTY;

12 "(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN
13 AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES
14 OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR
15 HOME;

16 "(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE
17 XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY
18 GIVEN TIME;

19 "(L) THE LOAN MUST BE SCHEDULED TO BE REPAYED IN PAYMENTS
20 THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH
21 PAYMENT PERIOD, UNLESS THE LOAN IS A REVERSE MORTGAGE;

22 "(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT
23 A WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU
24 RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND IF YOUR HOME WAS
25 SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN
26 SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS
27 PASSED FROM THE CLOSING DATE OF THE OTHER LOAN;

1 "(N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER,
2 TITLE COMPANY, OR AN ATTORNEY AT LAW;

3 "(O) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS
4 DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS
5 CONSTITUTION; AND

6 "(P) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF
7 THE TEXAS CONSTITUTION MUST:

8 "(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER
9 DEBT THAT IS NOT SECURED BY YOUR HOME OR TO ANOTHER DEBT TO THE
10 SAME LENDER;

11 "(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

12 "(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH
13 HAVE BLANKS LEFT TO BE FILLED IN;

14 "(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF
15 JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT
16 OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

17 "(5) PROVIDE THAT YOU RECEIVE A COPY OF ALL DOCUMENTS
18 YOU SIGN AT CLOSING;

19 "(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A
20 DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6),
21 ARTICLE XVI, OF THE TEXAS CONSTITUTION;

22 "(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE
23 LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF
24 THE LIEN, WHICHEVER IS APPROPRIATE;

25 "(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER
26 CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

27 "(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE

1 FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSSES; AND

2 "(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL
3 PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE
4 LENDER'S OBLIGATIONS." If the discussions with the borrower are
5 conducted primarily in a language other than English, the lender
6 shall, before closing, provide an additional copy of the notice
7 translated into the written language in which the discussions were
8 conducted.

9 (h) Subsection (a)(6) and Subsections (e)-(g) of this
10 section are not severable, and none of those provisions would have
11 been enacted without the others. If any of those provisions are
12 held to be preempted by the laws of the United States, all of those
13 provisions are invalid. This subsection shall not apply to any
14 lien or extension of credit made after January 1, 1998, and before
15 the date any provision under Subsection (a)(6) or Subsections
16 (e)-(g) is held to be preempted.

17 (i) The advances made on a reverse mortgage loan under which
18 more than one advance is made must be made at regular intervals
19 according to a plan established by the original loan agreement.

20 SECTION 2. The following temporary provision is added to the
21 Texas Constitution:

22 TEMPORARY PROVISION. (a) This temporary provision applies
23 to the constitutional amendment proposed by the 75th Legislature,
24 Regular Session, 1997, authorizing a voluntary consensual
25 encumbrance on homestead property.

26 (b) The constitutional amendment takes effect January 1,
27 1998.

1 (c) This temporary provision takes effect on the adoption of
2 the amendment by the voters and expires January 2, 1998.

3 SECTION 3. This proposed constitutional amendment shall be
4 submitted to the voters at an election to be held November 4, 1997.
5 The ballot shall be printed to permit voting for or against the
6 proposition: "The amendment to the Texas Constitution expanding
7 the types of liens for home equity loans that a lender, with the
8 homeowner's consent, may place against a homestead."

HOUSE ENGROSSMENT

By Patterson, Marchant, Danburg, Rabuck,
Solomons, et al.

H.J.R. No. 31

A JOINT RESOLUTION

1 proposing a constitutional amendment permitting an encumbrance
2 against homestead property for certain extensions of equity credit.

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 *Amend*
(1)
5 *INSERT A*
6 *^*

7 ~~SECTION 1. Section 50, Article XVI, Texas Constitution, is~~
8 amended to read as follows:

9 Sec. 50. (a) The homestead of a family, or of a single
10 adult person, shall be, and is hereby protected from forced sale,
11 for the payment of all debts except for:

12 (1) the purchase money thereof, or a part of such
13 purchase money;

14 (2) [7] the taxes due thereon;

15 (3) [7] an owelty of partition imposed against the
16 entirety of the property by a court order or by a written agreement
17 of the parties to the partition, including a debt of one spouse in
18 favor of the other spouse resulting from a division or an award of
19 a family homestead in a divorce proceeding;

20 (4) [7] the refinance of a lien against a homestead,
21 including a federal tax lien resulting from the tax debt of both
22 spouses, if the homestead is a family homestead, or from the tax
23 debt of the owner;

(5) [7--or-for] work and material used in constructing
improvements thereon, if [and-in-this-last-case-only-when] the work
and material are contracted for in writing, with the consent of

1 ~~both spouses, in the case of a family homestead, given in the same~~
2 manner as is required in making a sale and conveyance of the
3 homestead; or

4 (6) an extension of credit that:

5 (A) is secured by a voluntary lien on the
6 homestead created under a written agreement with the consent of
7 each owner and each owner's spouse;

8 (B) is of a principal amount that when added to
9 the aggregate total of the outstanding principal balances of all
10 other indebtedness secured by valid encumbrances of record against
11 the homestead does not exceed 75 percent of the fair market value
12 of the homestead on the date the extension of credit is made;

13 (C) is without recourse for personal liability
14 against each owner and the spouse of each owner;

15 (D) is secured by a lien that may be foreclosed
16 upon only by a court order;

17 (E) does not require the owner or the owner's
18 spouse to pay, in addition to any interest, fees to any person that
19 are necessary to originate, evaluate, maintain, record, insure, or
20 service the extension of credit that exceed, in the aggregate,
21 three percent of the original principal amount of the extension of
22 credit;

23 (F) is not a form of open-end account that may
24 be debited from time to time or under which credit may be extended
25 from time to time, unless the extension of credit is a reverse
26 mortgage;

27 (G) is payable in advance without penalty or

1 other charge:

2 (H) is not secured by any additional real or
3 personal property other than the homestead;

4 (I) is not secured by homestead property
5 designated for agricultural use as provided by statutes governing
6 property tax;

7 (J) may not be accelerated because of a decrease
8 in the market value of the homestead or because of the owner's
9 default under other indebtedness not secured by a prior valid
10 encumbrance against the homestead;

11 (K) is the only debt secured by the homestead at
12 the time the extension of credit is made unless the other debt was
13 made for a purpose described by Subsections (a)(1)-(a)(5) of this
14 section;

15 (L) is, unless the extension of credit is a
16 reverse mortgage, scheduled to be repaid in substantially equal
17 successive monthly installments beginning no later than two months
18 from the date the extension of credit is made, each of which equals
19 or exceeds the amount of accrued interest as of the date of the
20 scheduled installment;

21 (M) is closed not before:

22 (i) the 12th day after the later of the
23 date that the owner of the homestead submits an application to the
24 lender for the extension of credit or the date that the lender
25 provides the owner a copy of the notice prescribed by Subsection
26 (g) of this section; and

27 (ii) the first anniversary of the closing

date of any other extension of credit described by Subsection
(a)(6) of this section secured by the same homestead property;

(N) is closed only at the office of the lender,
an attorney at law, or a title company;

(O) is made by one of the following that has not
been found by a federal regulatory agency to have engaged in the
practice of refusing to make loans because the applicants for the
loans reside or the property proposed to secure the loans is
located in a certain area:

(i) a bank, savings and loan association,
savings bank, or credit union doing business under the laws of this
state or the United States;

(ii) a federally chartered lending
instrumentality or a person approved as a mortgagee by the United
States government to make federally insured loans; or

(iii) a person licensed to make regulated
loans, as provided by statute of this state; and

(P) is made on the condition that:

(i) the owner of the homestead is not
required to apply the proceeds of the extension of credit to repay
another debt except debt secured by the homestead or debt to
another lender;

(ii) the owner of the homestead not assign
wages as security for the extension of credit;

(iii) the owner of the homestead not sign
any instrument in which blanks are left to be filled in;

(iv) the owner of the homestead not sign a

1 confession or judgment or power of attorney to the lender or to a
2 third person to confess judgment or to appear for the owner in a
3 judicial proceeding;

4 (v) the lender, at the time the extension
5 of credit is made, provide the owner of the homestead a copy of all
6 documents signed by the owner related to the extension of credit;

7 (vi) the security instruments securing the
8 extension of credit contain a disclosure that the extension of
9 credit is the type of credit defined by Section 50(a)(6), Article
10 XVI, Texas Constitution;

11 (vii) within a reasonable time after
12 termination and full payment of the extension of credit, the lender
13 cancel and return the promissory note to the owner of the homestead
14 and give the owner, in recordable form, a release of the lien
15 securing the extension of credit or a copy of an endorsement and
16 assignment of the lien to a lender that is refinancing the
17 extension of credit;

18 (viii) the owner of the homestead and any
19 spouse of the owner may, within three days after the extension of
20 credit is made, rescind the extension of credit without penalty or
21 charge;

22 (ix) the owner of the homestead and the
23 lender sign a written acknowledgment as to the fair market value of
24 the homestead property on the date the extension of credit is made;
25 and

26 (x) the lender or any holder of the note
27 for the extension of credit shall forfeit all principal and

1 interest of the extension of credit if the lender fails to comply
2 with the lender's obligations under the extension of credit within
3 a reasonable time after the lender is notified of its failure to
4 comply.

5 (b) An ~~[nor--may--the]~~ owner or claimant of the property
6 claimed as homestead may not ~~[7-if-married7]~~ sell or abandon the
7 homestead without the consent of each owner and the ~~[other]~~ spouse
8 of each owner, given in such manner as may be prescribed by law.

9 (c) No mortgage, trust deed, or other lien on the homestead
10 shall ever be valid unless it secures a debt described by this
11 section, ~~[except-for-a-debt-described-by--this--section7]~~ whether
12 such mortgage, ~~[or]~~ trust deed, or other lien, shall have been
13 created by the owner alone, or together with his or her spouse, in
14 case the owner is married. All pretended sales of the homestead
15 involving any condition of defeasance shall be void.

16 (d) A purchaser or lender for value without actual knowledge
17 may conclusively rely on an affidavit that designates other
18 property as the homestead of the affiant and that states that the
19 property to be conveyed or encumbered is not the homestead of the
20 affiant.

21 (e) A refinance of debt secured by a homestead and described
22 by any subsection under Subsections (a)(1)-(a)(5) that includes the
23 advance of additional funds may not be secured by a valid lien
24 against the homestead unless:

25 (1) the refinance of the debt is an extension of
26 credit described by Subsection (a)(6) of this section; or

27 (2) the advance of all the additional funds is for

1 reasonable costs necessary to refinance such debt or for a purpose
2 described by Subsection (a)(2), (a)(3), or (a)(5) of this section.

3 (f) A refinance of debt secured by the homestead, any
4 portion of which is an extension of credit described by Subsection
5 (a)(6) of this section, may not be secured by a valid lien against
6 the homestead unless the refinance of the debt is an extension of
7 credit described by Subsection (a)(6) of this section.

8 (g) An extension of credit described by Subsection (a)(6)
9 of this section may be secured by a valid lien against homestead
10 property if the extension of credit is not closed before the 12th
11 day after the lender provides the owner with the following written
12 notice on a separate instrument:

13 "NOTICE CONCERNING EXTENSIONS OF CREDIT

14 DEFINED BY SECTION 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

15 "SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION
16 ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME.
17 SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY
18 THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER
19 MAY FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

20 "(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT
21 OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;

22 "(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE
23 MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL
24 BALANCES OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 75% OF
25 THE FAIR MARKET VALUE OF YOUR HOME;

26 "(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL
27 LIABILITY AGAINST YOU AND YOUR SPOUSE;

1 "(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY
2 WITH A COURT ORDER;

3 "(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3% OF
4 THE LOAN AMOUNT;

5 "(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE
6 DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED
7 FROM TIME TO TIME, UNLESS THE LOAN IS A REVERSE MORTGAGE;

8 "(G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;

9 "(H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

10 "(I) THE LOAN MAY NOT BE SECURED BY AGRICULTURAL HOMESTEAD
11 PROPERTY;

12 "(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN
13 AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES
14 OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR
15 HOME;

16 "(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE
17 XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY
18 GIVEN TIME;

19 "(L) THE LOAN MUST BE SCHEDULED TO BE REPAID IN PAYMENTS
20 THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH
21 PAYMENT PERIOD, UNLESS THE LOAN IS A REVERSE MORTGAGE;

22 "(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT
23 A WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU
24 RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND IF YOUR HOME WAS
25 SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN
26 SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS
27 PASSED FROM THE CLOSING DATE OF THE OTHER LOAN;

1 "(N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER,
2 TITLE COMPANY, OR AN ATTORNEY AT LAW;

3 "(O) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS
4 DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS
5 CONSTITUTION; AND

6 "(P) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF
7 THE TEXAS CONSTITUTION MUST:

8 "(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER
9 DEBT THAT IS NOT SECURED BY YOUR HOME OR TO ANOTHER DEBT TO THE
10 SAME LENDER;

11 "(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

12 "(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH
13 HAVE BLANKS LEFT TO BE FILLED IN;

14 "(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF
15 JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT
16 OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

17 "(5) PROVIDE THAT YOU RECEIVE A COPY OF ALL DOCUMENTS
18 YOU SIGN AT CLOSING;

19 "(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A
20 DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6),
21 ARTICLE XVI, OF THE TEXAS CONSTITUTION;

22 "(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE
23 LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF
24 THE LIEN, WHICHEVER IS APPROPRIATE;

25 "(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER
26 CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

27 "(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE

1 FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSSES; AND

2 "(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL
3 PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE
4 LENDER'S OBLIGATIONS." If the discussions with the borrower are
5 conducted primarily in a language other than English, the lender
6 shall, before closing, provide an additional copy of the notice
7 translated into the written language in which the discussions were
8 conducted.

9 (h) Subsection (a)(6) and Subsections (e)-(g) of this
10 section are not severable, and none of those provisions would have
11 been enacted without the others. If any of those provisions are
12 held to be preempted by the laws of the United States, all of those
13 provisions are invalid. This subsection shall not apply to any
14 lien or extension of credit made after January 1, 1998, and before
15 the date any provision under Subsection (a)(6) or Subsections
16 (e)-(g) is held to be preempted.

17 (i) The advances made on a reverse mortgage loan under which
18 more than one advance is made must be made at regular intervals
19 according to a plan established by the original loan agreement.

20 SECTION 2. The following temporary provision is added to the
21 Texas Constitution:

22 TEMPORARY PROVISION. (a) This temporary provision applies
23 to the constitutional amendment proposed by the 75th Legislature,
24 Regular Session, 1997, authorizing a voluntary consensual
25 encumbrance on homestead property.

26 (b) The constitutional amendment takes effect January 1,
27 1998.

1 ~~(c) This temporary provision takes effect on the adoption of~~
2 ~~the amendment by the voters and expires January 2, 1998.~~

3 SECTION 3. This proposed constitutional amendment shall be
4 submitted to the voters at an election to be held November 4, 1997.
5 The ballot shall be printed to permit voting for or against the
6 proposition: "The amendment to the Texas Constitution expanding
7 the types of liens for home equity loans that a lender, with the
8 homeowner's consent, may place against a homestead."

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE
75th Regular Session

April 22, 1997

To: Honorable Kenny Marchant, Chair
Committee on Financial Institutions
House
Austin, Texas

IN RE: House Joint Resolution
No. 31, Committee
Report 1st House, Substituted
By: Patterson, L.P. "Pete"

From: John Keel, Director

In response to your request for a Fiscal Note on HJR31 (Proposing a constitutional amendment permitting an encumbrance to be fixed on a homestead for certain extensions of credit.) this office has determined the following:

Biennial Net Impact to General Revenue Funds by HJR31-Committee Report 1st House, Substituted
--

Implementing the provisions of the bill would result in a net positive impact of \$357,000 to General Revenue Related Funds through the biennium ending August 31, 1999.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.


Fiscal Analysis

The proposed constitutional amendment would permit home equity lending and create a division within the Office of the Consumer Credit Commissioner for the purpose of licensing, examining and verifying compliance of lenders with the provisions of the bill. The Office of the Consumer Credit Commissioner projects that additional examiners will be required to examine an increased number of licensed lenders at an increased cost per examination as a result of the added complexity of the type of examinations conducted. Collected revenues would increase due to the licensure of more regulated lenders, and from fees collected as a result of charges assessed to lenders for examinations.

Methodology

The Office of the Consumer Credit Commissioner's projected revenues of \$1.3 million during the first year of implementation include increased licensing fees resulting from a projected increase in the number of lenders, as well as revenues generated from examinations. The agency will charge a \$150 surcharge per visit, plus \$32 per hour of examination.

The agency projects that the cost of the new division would include 22 additional full time equivalents (FTEs), including 5 examiners, 2 assistant examiners, 3 financial analysts, 2 attorneys, 1 consumer education specialist, and 9 administrative technicians. Salaries are projected at \$740,000 per year. With additional travel and related operating costs, the total costs of operation and staffing is estimated at slightly



over \$1 million dollars per year.

In fiscal year 1998, there would also be the cost of publication for the constitutional amendment to be set before the voters.

The probable fiscal implications of Implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Five Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 0001	Probable Revenue Gain/(Loss) from General Revenue Fund 0001	Change in Number of State Employees from FY 1997
1998	(\$1,148,000)	\$1,256,000	22.0
1999	(1,012,000)	1,261,000	22.0
2000	(1,023,000)	1,261,000	22.0
2001	(1,043,000)	1,261,000	22.0
2002	(1,090,000)	1,316,000	22.0

Net Impact on General Revenue Related Funds:

The probable fiscal implication to General Revenue related funds during each of the first five years is estimated as follows:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
1998	\$108,000
1999	249,000
2000	238,000
2001	218,000
2002	226,000

Similar annual fiscal implications These impacts would continue as long as the provisions of the bill are in effect.

No fiscal implication to units of local government is anticipated.

Source: Agencies:

LBB Staff: JK, TH, JA

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE
75th Regular Session

February 10, 1997

To: Honorable Kenny Marchant, Chair
Committee on Financial Institutions
House
Austin, Texas

IN RE: House Joint Resolution
No. 31
By: Patterson, L.P. "Pete"

From: John Keel, Director

In response to your request for a Fiscal Note on HJR31 (Proposing a constitutional amendment permitting an encumbrance to be fixed on a homestead for certain extensions of credit.) this office has determined the following:

Biennial Net Impact to General Revenue Funds by HJR31-As Introduced
--

No fiscal implication to the State is anticipated, other than the cost of publication. The cost to the state for publication of the resolution is \$71,000.

Similar annual fiscal implications would continue as long as the provisions of the bill are in effect.

No fiscal implication to units of local government is anticipated.

Source: Agencies: 332 Department of Housing and Community Affairs
451 Department of Banking
450 Savings and Loan Department
307 Secretary of State
304 Comptroller of Public Accounts

LBB Staff: JK, TH, JA

1-1 By: Patterson, et al. (Senate Sponsor - Harris) H.J.R. No. 31
1-2 (In the Senate - Received from the House May 10, 1997;
1-3 May 13, 1997, read first time and referred to Committee on State
1-4 Affairs; May 18, 1997, reported favorably by the following vote:
1-5 Yeas 7, Nays 1; May 18, 1997, sent to printer.)

1-6 HOUSE JOINT RESOLUTION

1-7 proposing a constitutional amendment permitting an encumbrance
1-8 against homestead property for certain extensions of equity credit.

1-9 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Section 50, Article XVI, Texas Constitution, is
1-11 amended to read as follows:

1-12 Sec. 50. (a) The homestead of a family, or of a single
1-13 adult person, shall be, and is hereby protected from forced sale,
1-14 for the payment of all debts except for:

1-15 (1) the purchase money thereof, or a part of such
1-16 purchase money;

1-17 (2) [7] the taxes due thereon;

1-18 (3) [7] an owelty of partition imposed against the
1-19 entirety of the property by a court order or by a written agreement
1-20 of the parties to the partition, including a debt of one spouse in
1-21 favor of the other spouse resulting from a division or an award of
1-22 a family homestead in a divorce proceeding;

1-23 (4) [7] the refinance of a lien against a homestead,
1-24 including a federal tax lien resulting from the tax debt of both
1-25 spouses, if the homestead is a family homestead, or from the tax
1-26 debt of the owner;

1-27 (5) [7-or-for] work and material used in constructing
1-28 improvements thereon, if [and-in-this-last-case-only-when] the work
1-29 and material are contracted for in writing, with the consent of
1-30 both spouses, in the case of a family homestead, given in the same
1-31 manner as is required in making a sale and conveyance of the
1-32 homestead; or

1-33 (6) an extension of credit that:

1-34 (A) is secured by a voluntary lien on the
1-35 homestead created under a written agreement with the consent of
1-36 each owner and each owner's spouse;

1-37 (B) is of a principal amount that when added to
1-38 the aggregate total of the outstanding principal balances of all
1-39 other indebtedness secured by valid encumbrances of record against
1-40 the homestead does not exceed 75 percent of the fair market value
1-41 of the homestead on the date the extension of credit is made;

1-42 (C) is without recourse for personal liability
1-43 against each owner and the spouse of each owner;

1-44 (D) is secured by a lien that may be foreclosed
1-45 upon only by a court order;

1-46 (E) does not require the owner or the owner's
1-47 spouse to pay, in addition to any interest, fees to any person that
1-48 are necessary to originate, evaluate, maintain, record, insure, or
1-49 service the extension of credit that exceed, in the aggregate,
1-50 three percent of the original principal amount of the extension of
1-51 credit;

1-52 (F) is not a form of open-end account that may
1-53 be debited from time to time or under which credit may be extended
1-54 from time to time, unless the extension of credit is a reverse
1-55 mortgage;

1-56 (G) is payable in advance without penalty or
1-57 other charge;

1-58 (H) is not secured by any additional real or
1-59 personal property other than the homestead;

1-60 (I) is not secured by homestead property
1-61 designated for agricultural use as provided by statutes governing
1-62 property tax;

1-63 (J) may not be accelerated because of a decrease
1-64 in the market value of the homestead or because of the owner's

2-1 default under other indebtedness not secured by a prior valid
 2-2 encumbrance against the homestead;

2-3 (K) is the only debt secured by the homestead at
 2-4 the time the extension of credit is made unless the other debt was
 2-5 made for a purpose described by Subsections (a)(1)-(a)(5) of this
 2-6 section;

2-7 (L) is, unless the extension of credit is a
 2-8 reverse mortgage, scheduled to be repaid in substantially equal
 2-9 successive monthly installments beginning no later than two months
 2-10 from the date the extension of credit is made, each of which equals
 2-11 or exceeds the amount of accrued interest as of the date of the
 2-12 scheduled installment;

2-13 (M) is closed not before:
 2-14 (i) the 12th day after the later of the
 2-15 date that the owner of the homestead submits an application to the
 2-16 lender for the extension of credit or the date that the lender
 2-17 provides the owner a copy of the notice prescribed by Subsection
 2-18 (g) of this section; and

2-19 (ii) the first anniversary of the closing
 2-20 date of any other extension of credit described by Subsection
 2-21 (a)(6) of this section secured by the same homestead property;

2-22 (N) is closed only at the office of the lender,
 2-23 an attorney at law, or a title company;

2-24 (O) is made by one of the following that has not
 2-25 been found by a federal regulatory agency to have engaged in the
 2-26 practice of refusing to make loans because the applicants for the
 2-27 loans reside or the property proposed to secure the loans is
 2-28 located in a certain area:

2-29 (i) a bank, savings and loan association,
 2-30 savings bank, or credit union doing business under the laws of this
 2-31 state or the United States;

2-32 (ii) a federally chartered lending
 2-33 instrumentality or a person approved as a mortgagee by the United
 2-34 States government to make federally insured loans; or

2-35 (iii) a person licensed to make regulated
 2-36 loans, as provided by statute of this state; and

2-37 (P) is made on the condition that:
 2-38 (i) the owner of the homestead is not
 2-39 required to apply the proceeds of the extension of credit to repay
 2-40 another debt except debt secured by the homestead or debt to
 2-41 another lender;

2-42 (ii) the owner of the homestead not assign
 2-43 wages as security for the extension of credit;

2-44 (iii) the owner of the homestead not sign
 2-45 any instrument in which blanks are left to be filled in;

2-46 (iv) the owner of the homestead not sign a
 2-47 confession or judgment or power of attorney to the lender or to a
 2-48 third person to confess judgment or to appear for the owner in a
 2-49 judicial proceeding;

2-50 (v) the lender, at the time the extension
 2-51 of credit is made, provide the owner of the homestead a copy of all
 2-52 documents signed by the owner related to the extension of credit;

2-53 (vi) the security instruments securing the
 2-54 extension of credit contain a disclosure that the extension of
 2-55 credit is the type of credit defined by Section 50(a)(6), Article
 2-56 XVI, Texas Constitution;

2-57 (vii) within a reasonable time after
 2-58 termination and full payment of the extension of credit, the lender
 2-59 cancel and return the promissory note to the owner of the homestead
 2-60 and give the owner, in recordable form, a release of the lien
 2-61 securing the extension of credit or a copy of an endorsement and
 2-62 assignment of the lien to a lender that is refinancing the
 2-63 extension of credit;

2-64 (viii) the owner of the homestead and any
 2-65 spouse of the owner may, within three days after the extension of
 2-66 credit is made, rescind the extension of credit without penalty or
 2-67 charge;

2-68 (ix) the owner of the homestead and the
 2-69 lender sign a written acknowledgment as to the fair market value of

the homestead property on the date the extension of credit is made;
and

(x) the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the lender fails to comply with the lender's obligations under the extension of credit within a reasonable time after the lender is notified of its failure to comply.

(b) An ~~[nor-may-the]~~ owner or claimant of the property claimed as homestead may not ~~[if-married]~~ sell or abandon the homestead without the consent of each owner and the ~~[other]~~ spouse of each owner, given in such manner as may be prescribed by law.

(c) No mortgage, trust deed, or other lien on the homestead shall ever be valid unless it secures a debt described by this section, ~~[except--for--a--debt-described-by-this-section]~~ whether such mortgage, ~~[or]~~ trust deed, or other lien, shall have been created by the owner alone, or together with his or her spouse, in case the owner is married. All pretended sales of the homestead involving any condition of defeasance shall be void.

(d) A purchaser or lender for value without actual knowledge may conclusively rely on an affidavit that designates other property as the homestead of the affiant and that states that the property to be conveyed or encumbered is not the homestead of the affiant.

(e) A refinance of debt secured by a homestead and described by any subsection under Subsections (a)(1)-(a)(5) that includes the advance of additional funds may not be secured by a valid lien against the homestead unless:

(1) the refinance of the debt is an extension of credit described by Subsection (a)(6) of this section; or

(2) the advance of all the additional funds is for reasonable costs necessary to refinance such debt or for a purpose described by Subsection (a)(2), (a)(3), or (a)(5) of this section.

(f) A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of this section, may not be secured by a valid lien against the homestead unless the refinance of the debt is an extension of credit described by Subsection (a)(6) of this section.

(g) An extension of credit described by Subsection (a)(6) of this section may be secured by a valid lien against homestead property if the extension of credit is not closed before the 12th day after the lender provides the owner with the following written notice on a separate instrument:

"NOTICE CONCERNING EXTENSIONS OF CREDIT

DEFINED BY SECTION 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

"SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME. SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

"(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;

"(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL BALANCES OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 75% OF THE FAIR MARKET VALUE OF YOUR HOME;

"(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE;

"(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY WITH A COURT ORDER;

"(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3% OF THE LOAN AMOUNT;

"(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED FROM TIME TO TIME, UNLESS THE LOAN IS A REVERSE MORTGAGE;

"(G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;

"(H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

"(I) THE LOAN MAY NOT BE SECURED BY AGRICULTURAL HOMESTEAD PROPERTY;

4-1 "(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN
 4-2 AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES
 4-3 OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR
 4-4 HOME;

4-5 "(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE
 4-6 XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY
 4-7 GIVEN TIME;

4-8 "(L) THE LOAN MUST BE SCHEDULED TO BE REPAYED IN PAYMENTS
 4-9 THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH
 4-10 PAYMENT PERIOD, UNLESS THE LOAN IS A REVERSE MORTGAGE;

4-11 "(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT
 4-12 A WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU
 4-13 RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND IF YOUR HOME WAS
 4-14 SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN
 4-15 SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS
 4-16 PASSED FROM THE CLOSING DATE OF THE OTHER LOAN;

4-17 "(N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER,
 4-18 TITLE COMPANY, OR AN ATTORNEY AT LAW;

4-19 "(O) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS
 4-20 DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS
 4-21 CONSTITUTION; AND

4-22 "(P) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF
 4-23 THE TEXAS CONSTITUTION MUST:

4-24 "(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER
 4-25 DEBT THAT IS NOT SECURED BY YOUR HOME OR TO ANOTHER DEBT TO THE
 4-26 SAME LENDER;

4-27 "(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

4-28 "(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH
 4-29 HAVE BLANKS LEFT TO BE FILLED IN;

4-30 "(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF
 4-31 JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT
 4-32 OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

4-33 "(5) PROVIDE THAT YOU RECEIVE A COPY OF ALL DOCUMENTS
 4-34 YOU SIGN AT CLOSING;

4-35 "(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A
 4-36 DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6),
 4-37 ARTICLE XVI, OF THE TEXAS CONSTITUTION;

4-38 "(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE
 4-39 LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF
 4-40 THE LIEN, WHICHEVER IS APPROPRIATE;

4-41 "(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER
 4-42 CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

4-43 "(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE
 4-44 FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSES; AND

4-45 "(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL
 4-46 PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE
 4-47 LENDER'S OBLIGATIONS." If the discussions with the borrower are
 4-48 conducted primarily in a language other than English, the lender
 4-49 shall, before closing, provide an additional copy of the notice
 4-50 translated into the written language in which the discussions were
 4-51 conducted.

4-52 (h) Subsection (a)(6) and Subsections (e)-(g) of this
 4-53 section are not severable, and none of those provisions would have
 4-54 been enacted without the others. If any of those provisions are
 4-55 held to be preempted by the laws of the United States, all of those
 4-56 provisions are invalid. This subsection shall not apply to any
 4-57 lien or extension of credit made after January 1, 1998, and before
 4-58 the date any provision under Subsection (a)(6) or Subsections
 4-59 (e)-(g) is held to be preempted.

4-60 (i) The advances made on a reverse mortgage loan under which
 4-61 more than one advance is made must be made at regular intervals
 4-62 according to a plan established by the original loan agreement.

4-63 SECTION 2. The following temporary provision is added to the
 4-64 Texas Constitution:

4-65 TEMPORARY PROVISION. (a) This temporary provision applies
 4-66 to the constitutional amendment proposed by the 75th Legislature,
 4-67 Regular Session, 1997, authorizing a voluntary consensual
 4-68 encumbrance on homestead property.

4-69 (b) The constitutional amendment takes effect January 1,

5-1 1998.

5-2 (c) This temporary provision takes effect on the adoption of
5-3 the amendment by the voters and expires January 2, 1998.

5-4 SECTION 3. This proposed constitutional amendment shall be
5-5 submitted to the voters at an election to be held November 4, 1997.
5-6 The ballot shall be printed to permit voting for or against the
5-7 proposition: "The amendment to the Texas Constitution expanding
5-8 the types of liens for home equity loans that a lender, with the
5-9 homeowner's consent, may place against a homestead."

5-10

* * * * *

**FAVORABLE
SENATE COMMITTEE REPORT ON**

SB SCR SJR SR HB HCR HJR 31
By Patterson Harris
(Author/Senate Sponsor)
5-18-97
(date)

We, your Committee on STATE AFFAIRS, to which was referred the attached measure,
have on 5/17/97, had the same under consideration and I am instructed to report it
(date of hearing)
back with the recommendation (s) that it:

- ☒ do pass and be printed
☐ do pass and be ordered not printed
☐ and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. ☒ yes ☐ no

A revised fiscal note was requested. ☐ yes ☒ no

An actuarial analysis was requested. ☐ yes ☒ no

Considered by subcommittee. ☐ yes ☒ no

The measure was reported from Committee by the following vote:

	YEA	NAY	ABSENT	PNV
Senator Armbrister, Chair	<input checked="" type="checkbox"/>			
Senator Nixon, Vice-Chair				<input checked="" type="checkbox"/>
Senator Cain			<input checked="" type="checkbox"/>	
Senator Carona	<input checked="" type="checkbox"/>			
Senator Ellis	<input checked="" type="checkbox"/>			
Senator Fraser				<input checked="" type="checkbox"/>
Senator Gallegos	<input checked="" type="checkbox"/>			
Senator Galloway	<input checked="" type="checkbox"/>			
Senator Lindsay	<input checked="" type="checkbox"/>			
Senator Luna		<input checked="" type="checkbox"/>		
Senator Nelson			<input checked="" type="checkbox"/>	
Senator Shapiro			<input checked="" type="checkbox"/>	
Senator Whitmire	<input checked="" type="checkbox"/>			
TOTAL VOTES	7	1	3	2

COMMITTEE ACTION

☒ S266 Considered in public hearing
☒ S270 Testimony taken

Kelly C. Gilbert
COMMITTEE CLERK

[Signature]
CHAIRMAN

Paper clip the original and one copy of this signed form to the original bill
Retain one copy of this form for Committee files

WITNESS LIST

HJR 31
SENATE COMMITTEE REPORT
State Affairs Committee

May 17, 1997 - 12:30P

For: Harris, Mitchell (TX Assc. Dairymen), Stephenville

Schneider, Rob (Consumers Union), Austin

Sieperda, Owen (TX Assc of Dairymen), Dublin

Stinson, Bill (TX Assc of Realtors), Ausitn

Terrell, James (TX Assc of Dairymen), Austin

Van Vliet, Jake (TX Assc. Dairymen), Dublin

Walker, Ronald (TX Assc. Realtors), Austin

Against: Williams, David (Independent Bankers Ass), Austin

On: Chiglierl, Catherine (TX Dept. of Banking), Austin

Pettijohn, Leslie (Consumer Credit Commiss), Austin

Smith, Tom (Public Citizen), Austin

Registering, but not testifying:

For: Howden, Robert (Natl.Fed.Independ.Busi), Austin

Scruggs, Ken (Household Finance Group), Austin

Against: Hinojosa, Walter (TX AFL-CIO), Austin

On: Norcross, Rob (TX Conf. Homeowners Rts), Austin

BILL ANALYSIS

Senate Research Center

H.J.R. 31
By: Patterson (Patterson, Harris)
State Affairs
5-15-97
Engrossed

DIGEST

Texas is the last remaining state to have virtually no home equity lending. However, the ability to tap home equity in lending would allow Texas homeowners to access a great deal of their capital. At the same time, there is a public demand for consumer protections in this process. This session several bills have been offered on home equity lending. This bill would allow unlimited cause to access home equity lending, as well as some consumer protections, such as written consent of the homeowner and spouse; a 75 percent limit on fair market value of the homestead as the loan limit; no recourse for personal liability; judicial foreclosure; limits on extra interest, fees, and charges; a prohibition on open-ended accounts; prepayment without penalty; no securing against other property than the homestead; no agricultural liens; a procedure for reverse mortgages; limits on foreclosure process; prohibition on wage assignment; prohibition on tying the home equity loan against any other loan; release of lien procedure; and notice requirements.

PURPOSE

As proposed, H.J.R. 31 allows unlimited cause to access home equity lending, as well as some consumer protections, such as written consent of the homeowner and spouse; a 75 percent limit on fair market value of the homestead as the loan limit; no recourse for personal liability; judicial foreclosure; limits on extra interest, fees, and charges; a prohibition on open-ended accounts; prepayment without penalty; no securing against other property than the homestead; no agricultural liens; a procedure for reverse mortgages; limits on foreclosure process; prohibition on wage assignment; prohibition on tying the home equity loan against any other loan; release of lien procedure; and notice requirements.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 50, Article XVI, Texas Constitution, as follows:

Sec. 50. (a) Requires the homestead of a family, or of a single adult person, to be, and is hereby protected from forced sale, for the payment of all debts except under certain conditions, including for an encumbrance against homestead property of a certain extension of credit. Sets forth the requirements of such an extension of credit. Makes conforming changes.

(b) Prohibits an owner or claimant of the property claimed as homestead from selling or abandoning the homestead without the consent of each owner and the spouse of each owner, given in such manner as may be prescribed by law. Makes conforming changes.

(c) Prohibits a mortgage, trust deed, other lien on the homestead from ever being valid unless it secures a debt described by this section, rather than except for a debt described by this section, whether such mortgage, trust deed, or other lien, shall have been created by the owner alone, or together with his or her spouse, in case the owner is married. Makes conforming and nonsubstantive changes.

(d) Makes a conforming change.

(e) Prohibits a refinance of debt secured by a homestead and described by any subsection under Subsections (a)(1)-(a)(5) that includes the advance of additional funds from being secured by a valid lien against the homestead except under certain conditions.

(f) Prohibits a refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of this section, from being secured by a valid lien against the homestead unless the refinance of the debt is an extension of credit described by Subsection (a)(6) of this section.

(g) Authorizes an extension of credit described by Subsection (a)(6) of this section to be secured by a valid lien against homestead property if the extension of credit is not closed before the 12th day after the lender provides the owner with a certain written notice on a separate instrument. Sets forth the contents of the written notice. Requires the lender before closing, if the discussions with the borrower are conducted primarily in a language other than English, to provide an additional copy of the notice translated into the written language in which the discussions were conducted.

(h) Provides that Subsection (a)(6) and Subsections (e)-(g) of this section are not severable, and none of those provisions would have been enacted without the others. Provides that if any of those provisions are held to be preempted by the laws of the United States, all of those provisions are invalid. Prohibits this subsection from applying to any lien or extension of credit made after January 1, 1998, and before the date any provision under Subsection (a)(6) or Subsections (e)-(g) is held to be preempted.

(i) Requires the advances made on a reverse mortgage loan under which more than one advance is made to be made at regular intervals according to a plan established by the original loan agreement.

SECTION 2. Amends the Texas Constitution, by adding the following temporary provision, as follows:

TEMPORARY PROVISION. (a) Provides that this temporary provision applies to the constitutional amendment proposed by the 75th Legislature, Regular Session, 1997, authorizing a voluntary consensual encumbrance on homestead property.

(b) Effective date of the constitutional amendment: January 1, 1998.

(c) Provides that this temporary provision takes effect on the adoption of the amendment by the voters and expires January 2, 1998.

SECTION 3. Requires this proposed constitutional amendment to be submitted to the voters at an election to be held November 4, 1997. Sets forth the required ballot proposition.

LEGISLATIVE BUDGET BOARD

Austin, Texas

**FISCAL NOTE
75th Regular Session**

May 15, 1997

To: Honorable Kenneth Armbrister, Chair
Committee on State Affairs
Senate
Austin, Texas

IN RE: House Joint Resolution
No. 31, As Engrossed
By: Patterson, L.P. "Pete"

From: John Keel, Director

In response to your request for a Fiscal Note on HJR31 (Proposing a constitutional amendment permitting an encumbrance against homestead property for certain extensions of equity credit.) this office has determined the following:

Biennial Net Impact to General Revenue Funds by HJR31-As Engrossed

Implementing the provisions of the bill would result in a net positive impact of \$324,500 to General Revenue Related Funds through the biennium ending August 31, 1999.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

Fiscal Analysis

The proposed constitutional amendment would permit home equity lending. The Office of the Consumer Credit Commissioner projects that additional examiners will be required to examine an increased number of licensed lenders at an increased cost per examination as a result of the added complexity of the type of examinations conducted. Collected revenues would increase due to the licensure of more regulated lenders, and from fees collected as a result of charges assessed to lenders for examinations.

Methodology

The Office of the Consumer Credit Commissioner's projected revenues of \$1.3 million during the first year of implementation include increased licensing fees resulting from a projected increase in the number of lenders, as well as revenues generated from examinations. The agency will charge a \$150 surcharge per visit, plus \$32 per hour of examination.

The agency projects that the cost of the new division would include 20 additional full time equivalents (FTEs), including 5 examiners, 2 assistant examiners, 1 financial analyst, 2 attorneys, 1 consumer education specialist, and 9 administrative technicians. Salaries are projected at \$670,000 per year. With additional travel and related operating costs, the total costs of operation and staffing is estimated at slightly under \$1 million dollars per year.

In fiscal year 1998, there would also be the cost of publication for the constitutional amendment to be set before the voters.

The probable fiscal implications of Implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Five Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 0001	Probable Revenue Gain/(Loss) from General Revenue Fund 0001	Change in Number of State Employees from FY 1997
1998	(\$1,068,000)	\$1,176,000	20.0
1999	(942,000)	1,158,500	20.0
2000	(953,000)	1,151,000	20.0
2001	(973,000)	1,146,000	20.0
2002	(1,020,000)	1,196,000	20.0

Net Impact on General Revenue Related Funds:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
1998	\$108,000
1999	216,500
2000	198,000
2001	173,000
2002	176,000

Similar annual fiscal implications would continue as long as the provisions of the bill are in effect.

No fiscal implication to units of local government is anticipated.

Source: Agencies: 304 Comptroller of Public Accounts

LBB Staff: JK, JD, TH, JA

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE 75th Regular Session

April 22, 1997

To: Honorable Kenny Marchant, Chair
Committee on Financial Institutions
House
Austin, Texas

IN RE: House Joint Resolution
No. 31, Committee
Report 1st House, Substituted
By: Patterson, L.P. "Pete"

From: John Keel, Director

In response to your request for a Fiscal Note on HJR31 (Proposing a constitutional amendment permitting an encumbrance to be fixed on a homestead for certain extensions of credit.) this office has determined the following:

Biennial Net Impact to General Revenue Funds by HJR31-Committee Report 1st House, Substituted

Implementing the provisions of the bill would result in a net positive impact of \$357,000 to General Revenue Related Funds through the biennium ending August 31, 1999.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

Fiscal Analysis

The proposed constitutional amendment would permit home equity lending and create a division within the Office of the Consumer Credit Commissioner for the purpose of licensing, examining and verifying compliance of lenders with the provisions of the bill. The Office of the Consumer Credit Commissioner projects that additional examiners will be required to examine an increased number of licensed lenders at an increased cost per examination as a result of the added complexity of the type of examinations conducted. Collected revenues would increase due to the licensure of more regulated lenders, and from fees collected as a result of charges assessed to lenders for examinations.

Methodology

The Office of the Consumer Credit Commissioner's projected revenues of \$1.3 million during the first year of implementation include increased licensing fees resulting from a projected increase in the number of lenders, as well as revenues generated from examinations. The agency will charge a \$150 surcharge per visit, plus \$32 per hour of examination.

The agency projects that the cost of the new division would include 22 additional full time equivalents (FTEs), including 5 examiners, 2 assistant examiners, 3 financial analysts, 2 attorneys, 1 consumer education specialist, and 9 administrative technicians. Salaries are projected at \$740,000 per year. With additional travel and related operating costs, the total costs of operation and staffing is estimated at slightly

over \$1 million dollars per year.

In fiscal year 1998, there would also be the cost of publication for the constitutional amendment to be set before the voters.

The probable fiscal implications of Implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Five Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 0001	Probable Revenue Gain/(Loss) from General Revenue Fund 0001	Change in Number of State Employees from FY 1997
1998	(\$1,148,000)	\$1,256,000	22.0
1999	(1,012,000)	1,261,000	22.0
2000	(1,023,000)	1,261,000	22.0
2001	(1,043,000)	1,261,000	22.0
2002	(1,090,000)	1,316,000	22.0

Net Impact on General Revenue Related Funds:

The probable fiscal implication to General Revenue related funds during each of the first five years is estimated as follows:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
1998	\$108,000
1999	249,000
2000	238,000
2001	218,000
2002	226,000

Similar annual fiscal implications These impacts would continue as long as the provisions of the bill are in effect.

No fiscal implication to units of local government is anticipated.

Source: Agencies:

LBB Staff: JK, TH, JA

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE
75th Regular Session

February 10, 1997

To: Honorable Kenny Marchant, Chair
Committee on Financial Institutions
House
Austin, Texas

IN RE: House Joint Resolution
No. 31
By: Patterson, L.P. "Pete"

From: John Keel, Director

In response to your request for a Fiscal Note on HJR31 (Proposing a constitutional amendment permitting an encumbrance to be fixed on a homestead for certain extensions of credit.) this office has determined the following:

Biennial Net Impact to General Revenue Funds by HJR31-As Introduced

No fiscal implication to the State is anticipated, other than the cost of publication. The cost to the state for publication of the resolution is \$71,000.

Similar annual fiscal implications would continue as long as the provisions of the bill are in effect.

No fiscal implication to units of local government is anticipated.

Source: Agencies: 332 Department of Housing and Community Affairs
451 Department of Banking
450 Savings and Loan Department
307 Secretary of State
304 Comptroller of Public Accounts

LBB Staff: JK, TH, JA

RECEIVED
SECRETARY OF SENATE

'97 MAY 17 PM 2:31

*Refer
Overlaid*

TAG FORM

5/17/97
Date

Austin, Texas

To the Chairman of the Committee on STATE AFFAIRS:

Pursuant to Senate Rule 11.20, I hereby request 48 hours advance notice in writing of the time and place of the hearing on HB No. 31.

HB

Charles F. Ryan

Give the original of this form to Calendar Clerk for placement on the bill, give one copy to the Secretary of the Senate's office, and one copy to the Chairman of the committee to which the bill was referred.

as amended
ADOPTED

MAY 24 1997

Floor Amendment No. 1

Amend HJR 31 as follows:

Letty Ling
Secretary of the Senate

J. Patterson
By: Patterson

Strike all below the resolving clause and substitute the following:

1 SECTION 1. Section 50, Article XVI, Texas Constitution, is
2 amended to read as follows:

3 *4* Sec. 50. (a) The homestead of a family, or of a single adult
4 person, shall be, and is hereby protected from forced sale, for
5 the payment of all debts except for:

6 *4* (1) the purchase money thereof, or a part of such
7 purchase money;

8 (2) [] the taxes due thereon;

9 (3) [] an owelty of partition imposed against the
10 entirety of the property by a court order or by a written
11 agreement of the parties to the partition, including a debt of one
12 spouse in favor of the other spouse resulting from a division or
13 an award of a family homestead in a divorce proceeding;

14 (4) [] the refinance of a lien against a homestead,
15 including a federal tax lien resulting from the tax debt of both
16 spouses, if the homestead is a family homestead, or from the tax
17 debt of the owner;

18 *Insert 2*
7 (5) ~~[, or for]~~ work and material used in constructing
19 improvements thereon, if ~~[and in this last case only when]~~ the
20 work and material are contracted for in writing, with the consent
21 of both spouses, in the case of a family homestead, given in the

1 ~~same manner as is required in making a sale and conveyance of the~~
2 ~~homestead; or~~

3 ~~the~~ (6) an extension of credit that:

4 (A) is secured by a voluntary lien on the homestead
5 created under a written agreement with the consent of each owner
6 and each owner's spouse;

7 (B) is of a principal amount that when added to the
8 aggregate total of the outstanding principal balances of all other
9 indebtedness secured by valid encumbrances of record against the
10 homestead does not exceed 80 percent of the fair market value of
11 the homestead on the date the extension of credit is made;

12 (C) is without recourse for personal liability
13 against each owner and the spouse of each owner, unless the owner
14 or spouse obtained the extension of credit by actual fraud;

15 (D) is secured by a lien that may be foreclosed
16 upon only by a court order;

17 (E) does not require the owner or the owner's
18 spouse to pay, in addition to any interest, fees to any person
19 that are necessary to originate, evaluate, maintain, record,
20 insure, or service the extension of credit that exceed, in the
21 aggregate, three percent of the original principal amount of the
22 extension of credit;

23 (F) is not a form of open-end account that may be
24 debited from time to time or under which credit may be extended
25 from time to time;

3

1 ~~FFFF~~ (G) is payable in advance without penalty or other
2 charge;

3 (H) is not secured by any additional real or
4 personal property other than the homestead;

5 (I) is not secured by homestead property designated
6 for agricultural use as provided by statutes governing property
7 tax, unless such homestead property is used primarily for the
8 production of milk;

9 (J) may not be accelerated because of a decrease in
10 the market value of the homestead or because of the owner's
11 default under other indebtedness not secured by a prior valid
12 encumbrance against the homestead;

13 (K) is the only debt secured by the homestead at
14 the time the extension of credit is made unless the other debt was
15 made for a purpose described by Subsections (a)(1)-(a)(5) of this
16 section;

17 (L) is scheduled to be repaid in substantially
18 equal successive monthly installments beginning no later than two
19 months from the date the extension of credit is made, each of
20 which equals or exceeds the amount of accrued interest as of the
21 date of the scheduled installment;

22 (M) is closed not before:

23 ~~FFFF~~ (i) the 12th day after the later of
24 the date that the owner of the homestead submits an application to
25 the lender for the extension of credit or the date that the lender

1 provides the owner a copy of the notice prescribed by Subsection
2 (g) of this section; and

3 the first anniversary of the
4 closing date of any other extension of credit described by
5 Subsection (a) (6) of this section secured by the same homestead
6 property;

7 (N) is closed only at the office of the lender, an
8 attorney at law, or a title company;

9 (O) permits a lender to contract for and receive
10 any fixed or variable rate of interest authorized under statute;

11 (P) is made by one of the following that has not
12 been found by a federal regulatory agency to have engaged in the
13 practice of refusing to make loans because the applicants for the
14 loans reside or the property proposed to secure the loans is
15 located in a certain area:

16 (i) a bank, savings and loan
17 association, savings bank, or credit union doing business under
18 the laws of this state or the United States;

19 (ii) a federally chartered lending
20 instrumentality or a person approved as a mortgagee by the United
21 States government to make federally insured loans; or

22 (iii) a person licensed to make
23 regulated loans, as provided by statute of this state; and

24 (Q) is made on the condition that:

25 (i) the owner of the homestead is
26 not required to apply the proceeds of the extension of credit to

1 repay another debt except debt secured by the homestead or debt to
2 another lender;

3 ~~the~~ (ii) the owner of the homestead not
4 assign wages as security for the extension of credit;

5 (iii) the owner of the homestead not
6 sign any instrument in which blanks are left to be filled in;

7 (iv) the owner of the homestead not
8 sign a confession ^{of} judgment or power of attorney to the lender
9 or to a third person to confess judgment or to appear for the
10 owner in a judicial proceeding;

11 (v) the lender, at the time the
12 extension of credit is made, provide the owner of the homestead a
13 copy of all documents signed by the owner related to the extension
14 of credit;

15 (vi) the security instruments
16 securing the extension of credit contain a disclosure that the
17 extension of credit is the type of credit defined by Section
18 50(a)(6), Article XVI, Texas Constitution;

19 (vii) within a reasonable time after
20 termination and full payment of the extension of credit, the
21 lender cancel and return the promissory note to the owner of the
22 homestead and give the owner, in recordable form, a release of the
23 lien securing the extension of credit or a copy of an endorsement
24 and assignment of the lien to a lender that is refinancing the
25 extension of credit;

6
1 ~~THAT~~ (viii) the owner of the homestead
2 and any spouse of the owner may, within three days after the
3 extension of credit is made, rescind the extension of credit
4 without penalty or charge;

5 (ix) the owner of the homestead and
6 the lender sign a written acknowledgment as to the fair market
7 value of the homestead property on the date the extension of
8 credit is made; and

9 (x) the lender or any holder of the
10 note for the extension of credit shall forfeit all principal and
11 interest of the extension of credit if the lender or holder fails
12 to comply with the lender's or holder's obligations under the
13 extension of credit within a reasonable time after the lender or
14 holder is notified by the borrower of the lender's failure to
15 comply; or

16 ~~THAT~~ (7) a reverse mortgage.

17 ~~THAT~~ (b) An ~~[nor may the]~~ owner or claimant of the property claimed
18 as homestead may not ~~[, if married,]~~ sell or abandon the homestead
19 without the consent of each owner and the ~~[other]~~ spouse of each
20 owner, given in such manner as may be prescribed by law.

21 (c) No mortgage, trust deed, or other lien on the homestead
22 shall ever be valid unless it secures a debt described by this
23 section, ~~[except for a debt described by this section,]~~ whether
24 such mortgage, ~~[or]~~ trust deed, or other lien, shall have been
25 created by the owner alone, or together with his or her spouse, in

7
1 case the owner is married. All pretended sales of the homestead
2 involving any condition of defeasance shall be void.

3 H (d) A purchaser or lender for value without actual knowledge
4 may conclusively rely on an affidavit that designates other
5 property as the homestead of the affiant and that states that the
6 property to be conveyed or encumbered is not the homestead of the
7 affiant.

8 (e) A refinance of debt secured by a homestead and described by
9 any subsection under Subsections (a)(1)-(a)(5) that includes the
10 advance of additional funds may not be secured by a valid lien
11 against the homestead unless:

12 HHH (1) the refinance of the debt is an extension of credit
13 described by Subsection (a)(6) of this section; or

14 (2) the advance of all the additional funds is for
15 reasonable costs necessary to refinance such debt or for a purpose
16 described by Subsection (a)(2), (a)(3), or (a)(5) of this section.

17 H (f) A refinance of debt secured by the homestead, any portion
18 of which is an extension of credit described by Subsection (a)(6)
19 of this section, may not be secured by a valid lien against the
20 homestead unless the refinance of the debt is an extension of
21 credit described by Subsection (a)(6) of this section.

22 (g) An extension of credit described by Subsection (a)(6) of
23 this section may be secured by a valid lien against homestead
24 property if the extension of credit is not closed before the 12th
25 day after the lender provides the owner with the following written
26 notice on a separate instrument:

7

1 "NOTICE CONCERNING EXTENSIONS OF CREDIT
2 DEFINED BY SECTION 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:
3 "SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION ALLOWS
4 CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME. SUCH
5 LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY THE
6 LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY
7 FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:
8 "(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT OF
9 EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;
10 "(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE
11 MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL
12 BALANCES OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80% OF
13 THE FAIR MARKET VALUE OF YOUR HOME;
14 "(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY
15 AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE OBTAINED
16 THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;
17 "(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY
18 WITH A COURT ORDER;
19 "(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3% OF THE
20 LOAN AMOUNT;
21 "(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE
22 DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED
23 FROM TIME TO TIME;
24 "(G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;
25 "(H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

9
1 * "(I) THE LOAN MAY NOT BE SECURED BY AGRICULTURAL HOMESTEAD
2 PROPERTY, UNLESS THE AGRICULTURAL HOMESTEAD PROPERTY IS USED
3 PRIMARILY FOR THE PRODUCTION OF MILK;

4 "(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN AGREED
5 SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES OR
6 BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR
7 HOME;

8 "(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI,
9 OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY
10 GIVEN TIME;

11 "(L) THE LOAN MUST BE SCHEDULED TO BE REPAID IN PAYMENTS THAT
12 EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH PAYMENT
13 PERIOD;

14 "(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A
15 WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU
16 RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND IF YOUR HOME WAS
17 SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW
18 LOAN SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR
19 HAS PASSED FROM THE CLOSING DATE OF THE OTHER LOAN;

20 "(N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER, TITLE
21 COMPANY, OR AN ATTORNEY AT LAW;

22 "(O) THE LENDER MAY CHARGE ANY FIXED OR VARIABLE RATE OF
23 INTEREST AUTHORIZED BY STATUTE;

24 "(P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS DESCRIBED
25 BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION; AND

19

1 "(O) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE
2 TEXAS CONSTITUTION MUST:

3 "(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER
4 DEBT THAT IS NOT SECURED BY YOUR HOME OR TO ANOTHER DEBT TO THE
5 SAME LENDER;

6 "(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

7 "(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH HAVE
8 BLANKS LEFT TO BE FILLED IN;

9 "(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF JUDGMENT
10 OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT OR
11 APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

12 "(5) PROVIDE THAT YOU RECEIVE A COPY OF ALL DOCUMENTS YOU
13 SIGN AT CLOSING;

14 "(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A
15 DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6),
16 ARTICLE XVI, OF THE TEXAS CONSTITUTION;

17 "(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE
18 LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT
19 OF THE LIEN, WHICHEVER IS APPROPRIATE;

20 "(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER CLOSING,
21 RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

22 "(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE FAIR
23 MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSES; AND

24 "(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL PRINCIPAL
25 AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE LENDER'S
26 OBLIGATIONS." ⁴ If the discussions with the borrower are conducted

11

1 primarily in a language other than English, the lender shall,
2 before closing, provide an additional copy of the notice
3 translated into the written language in which the discussions were
4 conducted.

5 ~~ff~~ (h) A lender or assignee for value may conclusively rely on the
6 written acknowledgment as to the fair market value of the
7 homestead property made in accordance with Subsection
8 (a) (6) (O) (ix) of this section if:

9 ~~ff~~ (1) the value acknowledged to is the value estimate in an
10 appraisal or evaluation prepared in accordance with a state or
11 federal requirement applicable to an extension of credit under
12 Subsection (a) (6); and

13 (2) the lender or assignee does not have actual knowledge
14 at the time of the payment of value or advance of funds by the
15 lender or assignee that the fair market value stated in the
16 written acknowledgment was incorrect.

17 ~~ff~~ (i) This subsection shall not affect or impair any right of the
18 borrower to recover damages from the lender or assignee under
19 applicable law for wrongful foreclosure. A purchaser for value
20 without actual knowledge may conclusively presume that a lien
21 securing an extension of credit described by Subsection (a) (6) of
22 this section was a valid lien securing the extension of credit
23 with homestead property if:

24 ~~ff~~ (1) the security instruments securing the extension of
25 credit contain a disclosure that the extension of credit secured

12

1 by the lien was the type of credit defined by Section 50(a)(6),
2 Article XVI, Texas Constitution;

3 ~~46~~ (2) the purchaser acquires the title to the property
4 pursuant to or after the foreclosure of the voluntary lien; and

5 (3) the purchaser is not the lender or assignee under the
6 extension of credit.

7 ~~4~~ (i) Subsection (a)(6) and Subsections (e)-(i) of this section
8 are not severable, and none of those provisions would have been
9 enacted without the others. If any of those provisions are held
10 to be preempted by the laws of the United States, all of those
11 provisions are invalid. This subsection shall not apply to any
12 lien or extension of credit made after January 1, 1998, and before
13 the date any provision under Subsection (a)(6) or Subsections
14 (e)-(i) is held to be preempted.

15 (k) "Reverse mortgage" means an extension of credit:

16 ~~47~~ (1) that is secured by a voluntary lien on homestead
17 property created by a written agreement with the consent of each
18 owner and each owner's spouse;

19 (2) that is made to a person who is or whose spouse is 55
20 years or older;

21 (3) that is made without recourse for personal liability
22 against each owner and the spouse of each owner;

23 (4) under which advances are provided to a borrower based
24 on the equity in a borrower's homestead;

1 ~~46~~ (5) that does not permit the lender to reduce the amount
2 or number of advances because of an adjustment in the interest
3 rate if periodic advances are to be made;

4 (6) that requires no payment of principal or interest
5 until:

6 ~~the~~ (A) the homestead property securing the loan is
7 sold or otherwise transferred; or

8 (B) all borrowers cease occupying the homestead
9 property as a principal residence for more than 180 consecutive
10 days and the location of the homestead property owner is unknown
11 to the lender;

12 ~~the~~ (7) that provides that if the lender fails to make loan
13 advances as required in the loan documents and if the lender fails
14 to cure the default as required in the loan documents, the lender
15 forfeits all principal and interest of the reverse mortgage; and

16 (8) that is not made unless the owner of the homestead
17 attests in writing that the owner received counseling regarding
18 the advisability and availability of reverse mortgages and other
19 financial alternatives.

20 ~~the~~ (1) Advances made under a reverse mortgage and interest on those
21 advances have priority over a lien filed for record in the real
22 property records in the county where the homestead property is
23 located after the reverse mortgage is filed for record in the real
24 property records of that county.

25 (m) A reverse mortgage may provide for an interest rate that is
26 fixed or adjustable and may also provide for interest that is

1 contingent on appreciation in the fair market value of the
2 homestead property. Although payment of principal or interest
3 shall not be required under a reverse mortgage until the entire
4 loan becomes due and payable, interest may accrue and be
5 compounded during the term of the loan as provided by the reverse
6 mortgage loan agreement.

7 (n) A reverse mortgage that is secured by a valid lien against
8 homestead property may be made or acquired without regard to the
9 following provisions of any other law of this state:

10 (1) a limitation on the purpose and use of future
11 advances or other mortgage proceeds;

12 (2) a limitation on future advances to a term of years or
13 a limitation on the term of open-end account advances;

14 (3) a limitation on the term during which future advances
15 take priority over intervening advances;

16 (4) a requirement that a maximum loan amount be stated in
17 the reverse mortgage loan documents;

18 (5) a prohibition on balloon payments;

19 (6) a prohibition on compound interest and interest on
20 interest;

21 (7) a prohibition on contracting for, charging, or
22 receiving any rate of interest authorized by any law of this state
23 authorizing a lender to contract for a rate of interest; and

24 (8) a requirement that a percentage of the reverse
25 mortgage proceeds be advanced before the assignment of the reverse
26 mortgage.

15

1 (o) For the purposes of determining eligibility under any
2 statute relating to payments, allowances, benefits, or services
3 provided on a means-tested basis by this state, including
4 supplemental security income, low-income energy assistance,
5 property tax relief, medical assistance, and general assistance:

6 (1) reverse mortgage loan advances made to a borrower are
7 considered proceeds from a loan and not income; and

8 (2) undisbursed funds under a reverse mortgage loan are
9 considered equity in a borrower's home and not proceeds from a
10 loan.

11 (p) The advances made on a reverse mortgage loan under which
12 more than one advance is made must be made at regular intervals
13 according to a plan established by the original loan agreement.

14 (q) To the extent that any statutes of this state, including
15 without limitation, Section 41.001 of the Texas Property Code,
16 purport to limit encumbrances that may properly be fixed on
17 homestead property in a manner that does not permit encumbrances
18 for extensions of credit described in Subsection (a)(6) or (a)(7)
19 of this section, the same shall be superseded to the extent that
20 such encumbrances shall be permitted to be fixed upon homestead
21 property in the manner provided for by this amendment.

22 SECTION 2. The following temporary provision is added to the
23 Texas Constitution:

24 TEMPORARY PROVISION. (a) This temporary provision applies to
25 the constitutional amendment proposed by the 75th Legislature,

1 Regular Session, 1997, authorizing a voluntary consensual
2 encumbrance on homestead property.

3 (b) The constitutional amendment takes effect January 1, 1998.

4 (c) This temporary provision takes effect on the adoption of
5 the amendment by the voters and expires January 2, 1998.

6 SECTION 3. This proposed constitutional amendment shall be
7 submitted to the voters at an election to be held November 4,
8 1997. The ballot shall be printed to permit voting for or against
9 the proposition: "The amendment to the Texas Constitution
10 expanding the types of liens for home equity loans that a lender,
11 with the homeowner's consent, may place against a homestead."

lhl / R

Floor Amendment No. 1a

By: 

Amend the Patterson floor substitute to HJR 31 on page 15, line 22 by adding a new section (r) as follows:

TH *94* (r) the Supreme Court shall promulgate rules of civil procedure for expedited foreclosure proceedings related to the foreclosure of liens under Subsection (a) (6) of this section. *RCW*

ADOPTED

CH MAY 24 1997 *CH*

Letty Ling
Secretary of the Senate *CH*

ADOPTED as amended

at MAY 24 1997

Amendment No. 2

By:

Betty Ling
Secretary of the Senate

Barrientos

Amend the Patterson Floor Substitute to HJR 31 on page 1, line 18 by striking section (5) and replacing it with a new section (5) as follows:

Insert 2 goes here

Amend 5
(5) ~~[or for] work and material used in constructing improvements thereon, if [and in this last case only when] the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead. Such a contract shall not be executed until 12 days after an owner of the homestead initiates loan application, and any such contract may be rescinded by any owner of the homestead within three days after its execution by all parties without penalty or charge, and may not be executed in any location other than the office of a lender, an attorney at law, or a title company; or~~

*Superseded
by amend 5*

ADOPTED

MAY 24 1997

CT *Ally Ling*
Secretary of the Senate

aw

NIXON

AMENDMENT NO. 3 to

BY: *[Signature]*

FLOOR AMENDMENT No. 1

Amend Amendment No. 1 as follows:

On page 4, between lines 23 and 24 add new Subsections

(a) (6) (P) (iv) and (a) (6) (P) (v) to read as follows:

new

(11 Insert 3)) ~~9999~~ (iv) a person who sold the homestead property
to the current owner and who provided all or part of the financing
for the purchase. *or*
~~9999~~ (v) ~~A~~ person who is related to the homestead
property owner within the second degree of affinity or
consanguinity. *is it*

lkl/s

ADOPTED

MAY 24 1997

Letty King
Secretary of the Senate

(lkl)

EHHS

AMENDMENT NO. 4

BY *Rodney Ellis*

Floor Amendment NO. 1 to

1 Amend ✓ H.J.R. No. 31 Section 50, Article XVI, Texas
2 Constitution, by adding a new ^{sub}section (S) to read as follows:

3 *Insert 4* (S) ^{of Texas} The Finance Commission shall appoint a director to
4 conduct research on the availability, quality, and prices of
5 financial services and research the practices of business entities
6 in the state that provide financial services under this section.
7 The director shall collect information and produce reports on
8 lending activity of those making loans under this section. The
9 director shall report his or her findings to the Legislature not
10 later than December 1 of each year.

ADOPTED on 3rd reading
by unanimous consent
MAY 26 1997

Amendment No. 5

Letty Ling
Secretary of the Senate

By: *Patterson*

Amend the Barrientos amendment No. 2 to the Patterson Floor Substitute to HJR 31 by striking everything below the amendment clause and substituting the following:

II-2
TH (5) ~~[, or for]~~ work and material used in constructing new improvements thereon, if contracted for in writing, or work and material used to repair or renovate existing improvements thereon if: [and in this last case only when]

TH (A) the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead;

TH (B) the contract for the work and material is not executed by the owner or the owner's spouse before the 12th day after the owner makes written application for any extension of credit for the work and material, unless the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing;

TH (C) the contract for the work and material expressly provides that the owner may rescind the contract without penalty or charge within three days after the execution of the contract by all parties, unless the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing; *and*

TH (D) the contract for the work and material is executed by the owner and the owner's spouse only at the office of a third-party lender making an extension of credit for the work and material, an attorney at law, or a title company;

SENATE AMENDMENTS

2nd Printing

By Patterson, Marchant, Danburg, Rabuck,
Solomons, et al.

H.J.R. No. 31

A JOINT RESOLUTION

proposing a constitutional amendment permitting an encumbrance
against homestead property for certain extensions of equity credit.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 50, Article XVI, Texas Constitution, is
amended to read as follows:

Sec. 50. (a) The homestead of a family, or of a single
adult person, shall be, and is hereby protected from forced sale,
for the payment of all debts except for:

(1) the purchase money thereof, or a part of such
purchase money;

(2) ~~the~~ taxes due thereon;

(3) ~~an~~ owelty of partition imposed against the
entirety of the property by a court order or by a written agreement
of the parties to the partition, including a debt of one spouse in
favor of the other spouse resulting from a division or an award of
a family homestead in a divorce proceeding;

(4) ~~the~~ refinance of a lien against a homestead,
including a federal tax lien resulting from the tax debt of both
spouses, if the homestead is a family homestead, or from the tax
debt of the owner;

(5) ~~the~~ work and material used in constructing
improvements thereon, if ~~and in this last case only when~~ the work
and material are contracted for in writing, with the consent of

1 both spouses, in the case of a family homestead, given in the same
2 manner as is required in making a sale and conveyance of the
3 homestead; or

4 (6) an extension of credit that:

5 (A) is secured by a voluntary lien on the
6 homestead created under a written agreement with the consent of
7 each owner and each owner's spouse;

8 (B) is of a principal amount that when added to
9 the aggregate total of the outstanding principal balances of all
10 other indebtedness secured by valid encumbrances of record against
11 the homestead does not exceed 75 percent of the fair market value
12 of the homestead on the date the extension of credit is made;

13 (C) is without recourse for personal liability
14 against each owner and the spouse of each owner;

15 (D) is secured by a lien that may be foreclosed
16 upon only by a court order;

17 (E) does not require the owner or the owner's
18 spouse to pay, in addition to any interest, fees to any person that
19 are necessary to originate, evaluate, maintain, record, insure, or
20 service the extension of credit that exceed, in the aggregate,
21 three percent of the original principal amount of the extension of
22 credit;

23 (F) is not a form of open-end account that may
24 be debited from time to time or under which credit may be extended
25 from time to time, unless the extension of credit is a reverse
26 mortgage;

27 (G) is payable in advance without penalty or

1 other charge;

2 (H) is not secured by any additional real or
3 personal property other than the homestead;

4 (I) is not secured by homestead property
5 designated for agricultural use as provided by statutes governing
6 property tax;

7 (J) may not be accelerated because of a decrease
8 in the market value of the homestead or because of the owner's
9 default under other indebtedness not secured by a prior valid
10 encumbrance against the homestead;

11 (K) is the only debt secured by the homestead at
12 the time the extension of credit is made unless the other debt was
13 made for a purpose described by Subsections (a)(1)-(a)(5) of this
14 section;

15 (L) is, unless the extension of credit is a
16 reverse mortgage, scheduled to be repaid in substantially equal
17 successive monthly installments beginning no later than two months
18 from the date the extension of credit is made, each of which equals
19 or exceeds the amount of accrued interest as of the date of the
20 scheduled installment;

21 (M) is closed not before:

22 (i) the 12th day after the later of the
23 date that the owner of the homestead submits an application to the
24 lender for the extension of credit or the date that the lender
25 provides the owner a copy of the notice prescribed by Subsection
26 (g) of this section; and

27 (ii) the first anniversary of the closing

1 date of any other extension of credit described by Subsection
2 (a)(6) of this section secured by the same homestead property;

3 (N) is closed only at the office of the lender,
4 an attorney at law, or a title company;

5 (O) is made by one of the following that has not
6 been found by a federal regulatory agency to have engaged in the
7 practice of refusing to make loans because the applicants for the
8 loans reside or the property proposed to secure the loans is
9 located in a certain area:

10 (i) a bank, savings and loan association,
11 savings bank, or credit union doing business under the laws of this
12 state or the United States;

13 (ii) a federally chartered lending
14 instrumentality or a person approved as a mortgagee by the United
15 States government to make federally insured loans; or

16 (iii) a person licensed to make regulated
17 loans, as provided by statute of this state; and

18 (P) is made on the condition that:

19 (i) the owner of the homestead is not
20 required to apply the proceeds of the extension of credit to repay
21 another debt except debt secured by the homestead or debt to
22 another lender;

23 (ii) the owner of the homestead not assign
24 wages as security for the extension of credit;

25 (iii) the owner of the homestead not sign
26 any instrument in which blanks are left to be filled in;

27 (iv) the owner of the homestead not sign a

1 confession or judgment or power of attorney to the lender or to a
2 third person to confess judgment or to appear for the owner in a
3 judicial proceeding;

4 (v) the lender, at the time the extension
5 of credit is made, provide the owner of the homestead a copy of all
6 documents signed by the owner related to the extension of credit;

7 (vi) the security instruments securing the
8 extension of credit contain a disclosure that the extension of
9 credit is the type of credit defined by Section 50(a)(6), Article
10 XVI, Texas Constitution;

11 (vii) within a reasonable time after
12 termination and full payment of the extension of credit, the lender
13 cancel and return the promissory note to the owner of the homestead
14 and give the owner, in recordable form, a release of the lien
15 securing the extension of credit or a copy of an endorsement and
16 assignment of the lien to a lender that is refinancing the
17 extension of credit;

18 (viii) the owner of the homestead and any
19 spouse of the owner may, within three days after the extension of
20 credit is made, rescind the extension of credit without penalty or
21 charge;

22 (ix) the owner of the homestead and the
23 lender sign a written acknowledgment as to the fair market value of
24 the homestead property on the date the extension of credit is made;
25 and

26 (x) the lender or any holder of the note
27 for the extension of credit shall forfeit all principal and

1 interest of the extension of credit if the lender fails to comply
2 with the lender's obligations under the extension of credit within
3 a reasonable time after the lender is notified of its failure to
4 comply.

5 (b) An ~~[nor--may--the]~~ owner or claimant of the property
6 claimed as homestead may not ~~[7--if-married7]~~ sell or abandon the
7 homestead without the consent of each owner and the ~~[other]~~ spouse
8 of each owner, given in such manner as may be prescribed by law.

9 (c) No mortgage, trust deed, or other lien on the homestead
10 shall ever be valid unless it secures a debt described by this
11 section, ~~[except-for-a-debt-described--by--this--section7]~~ whether
12 such mortgage, ~~[or]~~ trust deed, or other lien, shall have been
13 created by the owner alone, or together with his or her spouse, in
14 case the owner is married. All pretended sales of the homestead
15 involving any condition of defeasance shall be void.

16 (d) A purchaser or lender for value without actual knowledge
17 may conclusively rely on an affidavit that designates other
18 property as the homestead of the affiant and that states that the
19 property to be conveyed or encumbered is not the homestead of the
20 affiant.

21 (e) A refinance of debt secured by a homestead and described
22 by any subsection under Subsections (a)(1)-(a)(5) that includes the
23 advance of additional funds may not be secured by a valid lien
24 against the homestead unless:

25 (1) the refinance of the debt is an extension of
26 credit described by Subsection (a)(6) of this section; or

27 (2) the advance of all the additional funds is for

1 reasonable costs necessary to refinance such debt or for a purpose
2 described by Subsection (a)(2), (a)(3), or (a)(5) of this section.

3 (f) A refinance of debt secured by the homestead, any
4 portion of which is an extension of credit described by Subsection
5 (a)(6) of this section, may not be secured by a valid lien against
6 the homestead unless the refinance of the debt is an extension of
7 credit described by Subsection (a)(6) of this section.

8 (g) An extension of credit described by Subsection (a)(6)
9 of this section may be secured by a valid lien against homestead
10 property if the extension of credit is not closed before the 12th
11 day after the lender provides the owner with the following written
12 notice on a separate instrument:

13 "NOTICE CONCERNING EXTENSIONS OF CREDIT

14 DEFINED BY SECTION 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

15 "SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION
16 ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME.
17 SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY
18 THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER
19 MAY FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

20 "(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT
21 OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;

22 "(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE
23 MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL
24 BALANCES OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 75% OF
25 THE FAIR MARKET VALUE OF YOUR HOME;

26 "(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL
27 LIABILITY AGAINST YOU AND YOUR SPOUSE;

1 "(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY
2 WITH A COURT ORDER;

3 "(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3% OF
4 THE LOAN AMOUNT;

5 "(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE
6 DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED
7 FROM TIME TO TIME, UNLESS THE LOAN IS A REVERSE MORTGAGE;

8 "(G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;

9 "(H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

10 "(I) THE LOAN MAY NOT BE SECURED BY AGRICULTURAL HOMESTEAD
11 PROPERTY;

12 "(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN
13 AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES
14 OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR
15 HOME;

16 "(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE
17 XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY
18 GIVEN TIME;

19 "(L) THE LOAN MUST BE SCHEDULED TO BE REPAYED IN PAYMENTS
20 THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH
21 PAYMENT PERIOD, UNLESS THE LOAN IS A REVERSE MORTGAGE;

22 "(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT
23 A WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU
24 RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND IF YOUR HOME WAS
25 SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN
26 SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS
27 PASSED FROM THE CLOSING DATE OF THE OTHER LOAN;

1 "(N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER,
2 TITLE COMPANY, OR AN ATTORNEY AT LAW;

3 "(O) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS
4 DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS
5 CONSTITUTION; AND

6 "(P) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF
7 THE TEXAS CONSTITUTION MUST:

8 "(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER
9 DEBT THAT IS NOT SECURED BY YOUR HOME OR TO ANOTHER DEBT TO THE
10 SAME LENDER;

11 "(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

12 "(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH
13 HAVE BLANKS LEFT TO BE FILLED IN;

14 "(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF
15 JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT
16 OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

17 "(5) PROVIDE THAT YOU RECEIVE A COPY OF ALL DOCUMENTS
18 YOU SIGN AT CLOSING;

19 "(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A
20 DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6),
21 ARTICLE XVI, OF THE TEXAS CONSTITUTION;

22 "(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE
23 LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF
24 THE LIEN, WHICHEVER IS APPROPRIATE;

25 "(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER
26 CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

27 "(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE

1 FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSSES; AND

2 "(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL
3 PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE
4 LENDER'S OBLIGATIONS." If the discussions with the borrower are
5 conducted primarily in a language other than English, the lender
6 shall, before closing, provide an additional copy of the notice
7 translated into the written language in which the discussions were
8 conducted.

9 (h) Subsection (a)(6) and Subsections (e)-(g) of this
10 section are not severable, and none of those provisions would have
11 been enacted without the others. If any of those provisions are
12 held to be preempted by the laws of the United States, all of those
13 provisions are invalid. This subsection shall not apply to any
14 lien or extension of credit made after January 1, 1998, and before
15 the date any provision under Subsection (a)(6) or Subsections
16 (e)-(g) is held to be preempted.

17 (i) The advances made on a reverse mortgage loan under which
18 more than one advance is made must be made at regular intervals
19 according to a plan established by the original loan agreement.

20 SECTION 2. The following temporary provision is added to the
21 Texas Constitution:

22 TEMPORARY PROVISION. (a) This temporary provision applies
23 to the constitutional amendment proposed by the 75th Legislature,
24 Regular Session, 1997, authorizing a voluntary consensual
25 encumbrance on homestead property.

26 (b) The constitutional amendment takes effect January 1,
27 1998.

1 (c) This temporary provision takes effect on the adoption of
2 the amendment by the voters and expires January 2, 1998.

3 SECTION 3. This proposed constitutional amendment shall be
4 submitted to the voters at an election to be held November 4, 1997.
5 The ballot shall be printed to permit voting for or against the
6 proposition: "The amendment to the Texas Constitution expanding
7 the types of liens for home equity loans that a lender, with the
8 homeowner's consent, may place against a homestead."

as amended
ADOPTED

MAY 24 1997

Floor Amendment No. 1

Amend HJR 31 as follows:

Betty Ling
Secretary of the Senate

J. Patterson
By: Patterson

Strike all below the resolving clause and substitute the following:

1 SECTION 1. Section 50, Article XVI, Texas Constitution, is
2 amended to read as follows:

3 Sec. 50. (a) The homestead of a family, or of a single adult
4 person, shall be, and is hereby protected from forced sale, for
5 the payment of all debts except for:

6 (1) the purchase money thereof, or a part of such
7 purchase money;

8 (2) ~~[7]~~ the taxes due thereon;

9 (3) ~~[7]~~ an owelty of partition imposed against the
10 entirety of the property by a court order or by a written
11 agreement of the parties to the partition, including a debt of one
12 spouse in favor of the other spouse resulting from a division or
13 an award of a family homestead in a divorce proceeding;

14 (4) ~~[7]~~ the refinance of a lien against a homestead,
15 including a federal tax lien resulting from the tax debt of both
16 spouses, if the homestead is a family homestead, or from the tax
17 debt of the owner;

18 (5) ~~[7, or for]~~ work and material used in constructing
19 improvements thereon, if ~~[and in this last case only when]~~ the
20 work and material are contracted for in writing, with the consent
21 of both spouses, in the case of a family homestead, given in the

1 same manner as is required in making a sale and conveyance of the
2 homestead; or

3 (6) an extension of credit that:

4 (A) is secured by a voluntary lien on the homestead
5 created under a written agreement with the consent of each owner
6 and each owner's spouse;

7 (B) is of a principal amount that when added to the
8 aggregate total of the outstanding principal balances of all other
9 indebtedness secured by valid encumbrances of record against the
10 homestead does not exceed 80 percent of the fair market value of
11 the homestead on the date the extension of credit is made;

12 (C) is without recourse for personal liability
13 against each owner and the spouse of each owner, unless the owner
14 or spouse obtained the extension of credit by actual fraud;

15 (D) is secured by a lien that may be foreclosed
16 upon only by a court order;

17 (E) does not require the owner or the owner's
18 spouse to pay, in addition to any interest, fees to any person
19 that are necessary to originate, evaluate, maintain, record,
20 insure, or service the extension of credit that exceed, in the
21 aggregate, three percent of the original principal amount of the
22 extension of credit;

23 (F) is not a form of open-end account that may be
24 debited from time to time or under which credit may be extended
25 from time to time;

1 (G) is payable in advance without penalty or other
2 charge;

3 (H) is not secured by any additional real or
4 personal property other than the homestead;

5 (I) is not secured by homestead property designated
6 for agricultural use as provided by statutes governing property
7 tax, unless such homestead property is used primarily for the
8 production of milk;

9 (J) may not be accelerated because of a decrease in
10 the market value of the homestead or because of the owner's
11 default under other indebtedness not secured by a prior valid
12 encumbrance against the homestead;

13 (K) is the only debt secured by the homestead at
14 the time the extension of credit is made unless the other debt was
15 made for a purpose described by Subsections (a)(1)-(a)(5) of this
16 section;

17 (L) is scheduled to be repaid in substantially
18 equal successive monthly installments beginning no later than two
19 months from the date the extension of credit is made, each of
20 which equals or exceeds the amount of accrued interest as of the
21 date of the scheduled installment;

22 (M) is closed not before:

23 (i) the 12th day after the later of
24 the date that the owner of the homestead submits an application to
25 the lender for the extension of credit or the date that the lender

1 provides the owner a copy of the notice prescribed by Subsection
2 (g) of this section; and

3 (ii) the first anniversary of the
4 closing date of any other extension of credit described by
5 Subsection (a)(6) of this section secured by the same homestead
6 property;

7 (N) is closed only at the office of the lender, an
8 attorney at law, or a title company;

9 (O) permits a lender to contract for and receive
10 any fixed or variable rate of interest authorized under statute;

11 (P) is made by one of the following that has not
12 been found by a federal regulatory agency to have engaged in the
13 practice of refusing to make loans because the applicants for the
14 loans reside or the property proposed to secure the loans is
15 located in a certain area:

16 (i) a bank, savings and loan
17 association, savings bank, or credit union doing business under
18 the laws of this state or the United States;

19 (ii) a federally chartered lending
20 instrumentality or a person approved as a mortgagee by the United
21 States government to make federally insured loans; or

22 (iii) a person licensed to make
23 regulated loans, as provided by statute of this state; and

24 (Q) is made on the condition that:

25 (i) the owner of the homestead is
26 not required to apply the proceeds of the extension of credit to

1 repay another debt except debt secured by the homestead or debt to
2 another lender;

3 (ii) the owner of the homestead not
4 assign wages as security for the extension of credit;

5 (iii) the owner of the homestead not
6 sign any instrument in which blanks are left to be filled in;

7 (iv) the owner of the homestead not
8 sign a confession or judgment or power of attorney to the lender
9 or to a third person to confess judgment or to appear for the
10 owner in a judicial proceeding;

11 (v) the lender, at the time the
12 extension of credit is made, provide the owner of the homestead a
13 copy of all documents signed by the owner related to the extension
14 of credit;

15 (vi) the security instruments
16 securing the extension of credit contain a disclosure that the
17 extension of credit is the type of credit defined by Section
18 50(a)(6), Article XVI, Texas Constitution;

19 (vii) within a reasonable time after
20 termination and full payment of the extension of credit, the
21 lender cancel and return the promissory note to the owner of the
22 homestead and give the owner, in recordable form, a release of the
23 lien securing the extension of credit or a copy of an endorsement
24 and assignment of the lien to a lender that is refinancing the
25 extension of credit;

1 (viii) the owner of the homestead
2 and any spouse of the owner may, within three days after the
3 extension of credit is made, rescind the extension of credit
4 without penalty or charge;

5 (ix) the owner of the homestead and
6 the lender sign a written acknowledgment as to the fair market
7 value of the homestead property on the date the extension of
8 credit is made; and

9 (x) the lender or any holder of the
10 note for the extension of credit shall forfeit all principal and
11 interest of the extension of credit if the lender or holder fails
12 to comply with the lender's or holder's obligations under the
13 extension of credit within a reasonable time after the lender or
14 holder is notified by the borrower of the lender's failure to
15 comply; or

16 (7) a reverse mortgage.

17 (b) An ~~[nor may the]~~ owner or claimant of the property claimed
18 as homestead may not ~~[, if married,]~~ sell or abandon the homestead
19 without the consent of each owner and the ~~[either]~~ spouse of each
20 owner, given in such manner as may be prescribed by law.

21 (c) No mortgage, trust deed, or other lien on the homestead
22 shall ever be valid unless it secures a debt described by this
23 section, ~~[except for a debt described by this section,]~~ whether
24 such mortgage, ~~[or]~~ trust deed, or other lien, shall have been
25 created by the owner alone, or together with his or her spouse, in

1 case the owner is married. All pretended sales of the homestead
2 involving any condition of defeasance shall be void.

3 (d) A purchaser or lender for value without actual knowledge
4 may conclusively rely on an affidavit that designates other
5 property as the homestead of the affiant and that states that the
6 property to be conveyed or encumbered is not the homestead of the
7 affiant.

8 (e) A refinance of debt secured by a homestead and described by
9 any subsection under Subsections (a)(1)-(a)(5) that includes the
10 advance of additional funds may not be secured by a valid lien
11 against the homestead unless:

12 (1) the refinance of the debt is an extension of credit
13 described by Subsection (a)(6) of this section; or

14 (2) the advance of all the additional funds is for
15 reasonable costs necessary to refinance such debt or for a purpose
16 described by Subsection (a)(2), (a)(3), or (a)(5) of this section.

17 (f) A refinance of debt secured by the homestead, any portion
18 of which is an extension of credit described by Subsection (a)(6)
19 of this section, may not be secured by a valid lien against the
20 homestead unless the refinance of the debt is an extension of
21 credit described by Subsection (a)(6) of this section.

22 (g) An extension of credit described by Subsection (a)(6) of
23 this section may be secured by a valid lien against homestead
24 property if the extension of credit is not closed before the 12th
25 day after the lender provides the owner with the following written
26 notice on a separate instrument:

1 "NOTICE CONCERNING EXTENSIONS OF CREDIT
2 DEFINED BY SECTION 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

3 "SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION ALLOWS
4 CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME. SUCH
5 LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY THE
6 LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY
7 FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

8 "(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT OF
9 EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;

10 "(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE
11 MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL
12 BALANCES OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80% OF
13 THE FAIR MARKET VALUE OF YOUR HOME;

14 "(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY
15 AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE OBTAINED
16 THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;

17 "(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY
18 WITH A COURT ORDER;

19 "(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3% OF THE
20 LOAN AMOUNT;

21 "(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE
22 DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED
23 FROM TIME TO TIME;

24 "(G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;

25 "(H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

1 "(I) THE LOAN MAY NOT BE SECURED BY AGRICULTURAL HOMESTEAD
2 PROPERTY, UNLESS THE AGRICULTURAL HOMESTEAD PROPERTY IS USED
3 PRIMARILY FOR THE PRODUCTION OF MILK;

4 "(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN AGREED
5 SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES OR
6 BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR
7 HOME;

8 "(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI,
9 OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY
10 GIVEN TIME;

11 "(L) THE LOAN MUST BE SCHEDULED TO BE REPAID IN PAYMENTS THAT
12 EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH PAYMENT
13 PERIOD;

14 "(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A
15 WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU
16 RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND IF YOUR HOME WAS
17 SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW
18 LOAN SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR
19 HAS PASSED FROM THE CLOSING DATE OF THE OTHER LOAN;

20 "(N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER, TITLE
21 COMPANY, OR AN ATTORNEY AT LAW;

22 "(O) THE LENDER MAY CHARGE ANY FIXED OR VARIABLE RATE OF
23 INTEREST AUTHORIZED BY STATUTE;

24 "(P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS DESCRIBED
25 BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION; AND

1 "(O) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE
2 TEXAS CONSTITUTION MUST:

3 "(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER
4 DEBT THAT IS NOT SECURED BY YOUR HOME OR TO ANOTHER DEBT TO THE
5 SAME LENDER;

6 "(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

7 "(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH HAVE
8 BLANKS LEFT TO BE FILLED IN;

9 "(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF JUDGMENT
10 OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT OR
11 APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

12 "(5) PROVIDE THAT YOU RECEIVE A COPY OF ALL DOCUMENTS YOU
13 SIGN AT CLOSING;

14 "(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A
15 DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6),
16 ARTICLE XVI, OF THE TEXAS CONSTITUTION;

17 "(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE
18 LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT
19 OF THE LIEN, WHICHEVER IS APPROPRIATE;

20 "(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER CLOSING,
21 RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

22 "(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE FAIR
23 MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSES; AND

24 "(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL PRINCIPAL
25 AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE LENDER'S
26 OBLIGATIONS." If the discussions with the borrower are conducted

1 primarily in a language other than English, the lender shall,
2 before closing, provide an additional copy of the notice
3 translated into the written language in which the discussions were
4 conducted.

5 (h) A lender or assignee for value may conclusively rely on the
6 written acknowledgment as to the fair market value of the
7 homestead property made in accordance with Subsection
8 (a) (6) (O) (ix) of this section if:

9 (1) the value acknowledged to is the value estimate in an
10 appraisal or evaluation prepared in accordance with a state or
11 federal requirement applicable to an extension of credit under
12 Subsection (a) (6); and

13 (2) the lender or assignee does not have actual knowledge
14 at the time of the payment of value or advance of funds by the
15 lender or assignee that the fair market value stated in the
16 written acknowledgment was incorrect.

17 (i) This subsection shall not affect or impair any right of the
18 borrower to recover damages from the lender or assignee under
19 applicable law for wrongful foreclosure. A purchaser for value
20 without actual knowledge may conclusively presume that a lien
21 securing an extension of credit described by Subsection (a) (6) of
22 this section was a valid lien securing the extension of credit
23 with homestead property if:

24 (1) the security instruments securing the extension of
25 credit contain a disclosure that the extension of credit secured

1 by the lien was the type of credit defined by Section 50(a)(6),
2 Article XVI, Texas Constitution;

3 (2) the purchaser acquires the title to the property
4 pursuant to or after the foreclosure of the voluntary lien; and

5 (3) the purchaser is not the lender or assignee under the
6 extension of credit.

7 (j) Subsection (a)(6) and Subsections (e)-(i) of this section
8 are not severable, and none of those provisions would have been
9 enacted without the others. If any of those provisions are held
10 to be preempted by the laws of the United States, all of those
11 provisions are invalid. This subsection shall not apply to any
12 lien or extension of credit made after January 1, 1998, and before
13 the date any provision under Subsection (a)(6) or Subsections
14 (e)-(i) is held to be preempted.

15 (k) "Reverse mortgage" means an extension of credit:

16 (1) that is secured by a voluntary lien on homestead
17 property created by a written agreement with the consent of each
18 owner and each owner's spouse;

19 (2) that is made to a person who is or whose spouse is 55
20 years or older;

21 (3) that is made without recourse for personal liability
22 against each owner and the spouse of each owner;

23 (4) under which advances are provided to a borrower based
24 on the equity in a borrower's homestead;

12
23

1 (5) that does not permit the lender to reduce the amount
2 or number of advances because of an adjustment in the interest
3 rate if periodic advances are to be made;

4 (6) that requires no payment of principal or interest
5 until:

6 (A) the homestead property securing the loan is
7 sold or otherwise transferred; or

8 (B) all borrowers cease occupying the homestead
9 property as a principal residence for more than 180 consecutive
10 days and the location of the homestead property owner is unknown
11 to the lender;

12 (7) that provides that if the lender fails to make loan
13 advances as required in the loan documents and if the lender fails
14 to cure the default as required in the loan documents, the lender
15 forfeits all principal and interest of the reverse mortgage; and

16 (8) that is not made unless the owner of the homestead
17 attests in writing that the owner received counseling regarding
18 the advisability and availability of reverse mortgages and other
19 financial alternatives.

20 (1) Advances made under a reverse mortgage and interest on those
21 advances have priority over a lien filed for record in the real
22 property records in the county where the homestead property is
23 located after the reverse mortgage is filed for record in the real
24 property records of that county.

25 (m) A reverse mortgage may provide for an interest rate that is
26 fixed or adjustable and may also provide for interest that is

1 contingent on appreciation in the fair market value of the
2 homestead property. Although payment of principal or interest
3 shall not be required under a reverse mortgage until the entire
4 loan becomes due and payable, interest may accrue and be
5 compounded during the term of the loan as provided by the reverse
6 mortgage loan agreement.

7 (n) A reverse mortgage that is secured by a valid lien against
8 homestead property may be made or acquired without regard to the
9 following provisions of any other law of this state:

10 (1) a limitation on the purpose and use of future
11 advances or other mortgage proceeds;

12 (2) a limitation on future advances to a term of years or
13 a limitation on the term of open-end account advances;

14 (3) a limitation on the term during which future advances
15 take priority over intervening advances;

16 (4) a requirement that a maximum loan amount be stated in
17 the reverse mortgage loan documents;

18 (5) a prohibition on balloon payments;

19 (6) a prohibition on compound interest and interest on
20 interest;

21 (7) a prohibition on contracting for, charging, or
22 receiving any rate of interest authorized by any law of this state
23 authorizing a lender to contract for a rate of interest; and

24 (8) a requirement that a percentage of the reverse
25 mortgage proceeds be advanced before the assignment of the reverse
26 mortgage.

1 (o) For the purposes of determining eligibility under any
2 statute relating to payments, allowances, benefits, or services
3 provided on a means-tested basis by this state, including
4 supplemental security income, low-income energy assistance,
5 property tax relief, medical assistance, and general assistance:

6 (1) reverse mortgage loan advances made to a borrower are
7 considered proceeds from a loan and not income; and

8 (2) undisbursed funds under a reverse mortgage loan are
9 considered equity in a borrower's home and not proceeds from a
10 loan.

11 (p) The advances made on a reverse mortgage loan under which
12 more than one advance is made must be made at regular intervals
13 according to a plan established by the original loan agreement.

14 (q) To the extent that any statutes of this state, including
15 without limitation, Section 41.001 of the Texas Property Code,
16 purport to limit encumbrances that may properly be fixed on
17 homestead property in a manner that does not permit encumbrances
18 for extensions of credit described in Subsection (a)(6) or (a)(7)
19 of this section, the same shall be superseded to the extent that
20 such encumbrances shall be permitted to be fixed upon homestead
21 property in the manner provided for by this amendment. _

22 SECTION 2. The following temporary provision is added to the
23 Texas Constitution:

24 TEMPORARY PROVISION. (a) This temporary provision applies to
25 the constitutional amendment proposed by the 75th Legislature,

1 Regular Session, 1997, authorizing a voluntary consensual
2 encumbrance on homestead property.

3 (b) The constitutional amendment takes effect January 1, 1998.

4 (c) This temporary provision takes effect on the adoption of
5 the amendment by the voters and expires January 2, 1998.

6 SECTION 3. This proposed constitutional amendment shall be
7 submitted to the voters at an election to be held November 4,
8 1997. The ballot shall be printed to permit voting for or against
9 the proposition: "The amendment to the Texas Constitution
10 expanding the types of liens for home equity loans that a lender,
11 with the homeowner's consent, may place against a homestead."

Floor Amendment No. 1a

By: 

Amend the Patterson floor substitute to HJR 31 on page 15, line 22 by adding a new section (r) as follows:

(r) the Supreme Court shall promulgate rules of civil procedure for expedited foreclosure proceedings related to the foreclosure of liens under Subsection (a) (6) of this section.

ADOPTED

MAY 24 1997


Secretary of the Senate

ADOPTED *as amended*

MAY 24 1997

Amendment No. 2

By:

Letty Ling
Secretary of the Senate

Barrientos

Amend the Patterson Floor Substitute to HJR 31 on page 1, line 18 by striking section (5) and replacing it with a new section (5) as follows:

(5) [~~, or for~~] work and material used in constructing improvements thereon, if [~~and in this last case only when~~] the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead. Such a contract shall not be executed until 12 days after an owner of the homestead initiates loan application, and any such contract may be rescinded by any owner of the homestead within three days after its execution by all parties without penalty or charge, and may not be executed in any location other than the office of a lender, an attorney at law, or a title company; or

ADOPTED

MAY 24 1997

Little King
Secretary of the Senate

NIXON

AMENDMENT NO. 3 to

BY: *[Signature]*

FLOOR AMENDMENT No. 1

1 Amend Amendment No. 1 as follows:

2 On page 4, between lines 23 and 24 add new Subsections
3 (a) (6) (P) (iv) and (a) (6) (P) (v) to read as follows:

4 (iv) a person who sold the homestead property
5 to the current owner and who provided all or part of the financing
6 for the purchase.

7 (v) A person who is related to the homestead
8 property owner within the second degree of affinity or
9 consanguinity.

ADOPTED

MAY 24 1997

Letty Ling
Secretary of the Senate

EHHS

AMENDMENT NO. 4

BY *Rodney* *Ell*

Floor Amendment NO. 1 to

Amend ✓ H.J.R. No. 31 Section 50, Article XVI, Texas

Constitution, by adding a new section () to read as follows:

() The Finance Commission shall appoint a director to
conduct research on the availability, quality, and prices of
financial services and research the practices of business entities
in the state that provide financial services under this section.
The director shall collect information and produce reports on
lending activity of those making loans under this Section. The
director shall report his or her findings to the Legislature not
later than December 1 of each year.

ADOPTED *on 3rd reading*
by unanimous consent
MAY 26 1997

Amendment No. 5

Letty Ling
Secretary of the Senate

By: 

Amend the Barrientos amendment No. 2 to the Patterson Floor Substitute to HJR 31 by striking everything below the amendment clause and substituting the following:

(5) [~~, or for~~] work and material used in constructing new improvements thereon, if contracted for in writing, or work and material used to repair or renovate existing improvements thereon if: [and in this last case only when]

(A) the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead;

(B) the contract for the work and material is not executed by the owner or the owner's spouse before the 12th day after the owner makes written application for any extension of credit for the work and material, unless the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing;

(C) the contract for the work and material expressly provides that the owner may rescind the contract without penalty or charge within three days after the execution of the contract by all parties, unless the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing;

(D) the contract for the work and material is executed by the owner and the owner's spouse only at the office of a third-party lender making an extension of credit for the work and material, an attorney at law, or a title company;

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE 75th Regular Session

May 15, 1997

To: Honorable Kenneth Armbrister, Chair
Committee on State Affairs
Senate
Austin, Texas

IN RE: House Joint Resolution
No. 31, As Engrossed
By: Patterson, L.P. "Pete"

From: John Keel, Director

In response to your request for a Fiscal Note on HJR31 (Proposing a constitutional amendment permitting an encumbrance against homestead property for certain extensions of equity credit.) this office has determined the following:

Biennial Net Impact to General Revenue Funds by HJR31-As Engrossed

Implementing the provisions of the bill would result in a net positive impact of \$324,500 to General Revenue Related Funds through the biennium ending August 31, 1999.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

Fiscal Analysis

The proposed constitutional amendment would permit home equity lending. The Office of the Consumer Credit Commissioner projects that additional examiners will be required to examine an increased number of licensed lenders at an increased cost per examination as a result of the added complexity of the type of examinations conducted. Collected revenues would increase due to the licensure of more regulated lenders, and from fees collected as a result of charges assessed to lenders for examinations.

Methodology

The Office of the Consumer Credit Commissioner's projected revenues of \$1.3 million during the first year of implementation include increased licensing fees resulting from a projected increase in the number of lenders, as well as revenues generated from examinations. The agency will charge a \$150 surcharge per visit, plus \$32 per hour of examination.

The agency projects that the cost of the new division would include 20 additional full time equivalents (FTEs), including 5 examiners, 2 assistant examiners, 1 financial analyst, 2 attorneys, 1 consumer education specialist, and 9 administrative technicians. Salaries are projected at \$670,000 per year. With additional travel and related operating costs, the total costs of operation and staffing is estimated at slightly under \$1 million dollars per year.

In fiscal year 1998, there would also be the cost of publication for the constitutional amendment to be set before the voters.

The probable fiscal implications of Implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Five Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 0001	Probable Revenue Gain/(Loss) from General Revenue Fund 0001	Change in Number of State Employees from FY 1997
1998	(\$1,068,000)	\$1,176,000	20.0
1999	(942,000)	1,158,500	20.0
2000	(953,000)	1,151,000	20.0
2001	(973,000)	1,146,000	20.0
2002	(1,020,000)	1,196,000	20.0

Net Impact on General Revenue Related Funds:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
1998	\$108,000
1999	216,500
2000	198,000
2001	173,000
2002	176,000

Similar annual fiscal implications would continue as long as the provisions of the bill are in effect.

No fiscal implication to units of local government is anticipated.

Source: Agencies: 304 Comptroller of Public Accounts

LBB Staff: JK, JD, TH, JA

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE
75th Regular Session

April 22, 1997

To: Honorable Kenny Marchant, Chair
Committee on Financial Institutions
House
Austin, Texas

IN RE: House Joint Resolution
No. 31, Committee
Report 1st House, Substituted
By: Patterson, L.P. "Pete"

From: John Keel, Director

In response to your request for a Fiscal Note on HJR31 (Proposing a constitutional amendment permitting an encumbrance to be fixed on a homestead for certain extensions of credit.) this office has determined the following:

Biennial Net Impact to General Revenue Funds by HJR31-Committee Report 1st House, Substituted
--

Implementing the provisions of the bill would result in a net positive impact of \$357,000 to General Revenue Related Funds through the biennium ending August 31, 1999.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

Fiscal Analysis

The proposed constitutional amendment would permit home equity lending and create a division within the Office of the Consumer Credit Commissioner for the purpose of licensing, examining and verifying compliance of lenders with the provisions of the bill. The Office of the Consumer Credit Commissioner projects that additional examiners will be required to examine an increased number of licensed lenders at an increased cost per examination as a result of the added complexity of the type of examinations conducted. Collected revenues would increase due to the licensure of more regulated lenders, and from fees collected as a result of charges assessed to lenders for examinations.

Methodology

The Office of the Consumer Credit Commissioner's projected revenues of \$1.3 million during the first year of implementation include increased licensing fees resulting from a projected increase in the number of lenders, as well as revenues generated from examinations. The agency will charge a \$150 surcharge per visit, plus \$32 per hour of examination.

The agency projects that the cost of the new division would include 22 additional full time equivalents (FTEs), including 5 examiners, 2 assistant examiners, 3 financial analysts, 2 attorneys, 1 consumer education specialist, and 9 administrative technicians. Salaries are projected at \$740,000 per year. With additional travel and related operating costs, the total costs of operation and staffing is estimated at slightly

over \$1 million dollars per year.

In fiscal year 1998, there would also be the cost of publication for the constitutional amendment to be set before the voters.

The probable fiscal implications of Implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Five Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 0001	Probable Revenue Gain/(Loss) from General Revenue Fund 0001	Change in Number of State Employees from FY 1997
1998	(\$1,148,000)	\$1,256,000	22.0
1999	(1,012,000)	1,261,000	22.0
2000	(1,023,000)	1,261,000	22.0
2001	(1,043,000)	1,261,000	22.0
2002	(1,090,000)	1,316,000	22.0

Net Impact on General Revenue Related Funds:

The probable fiscal implication to General Revenue related funds during each of the first five years is estimated as follows:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
1998	\$108,000
1999	249,000
2000	238,000
2001	218,000
2002	226,000

Similar annual fiscal implications These impacts would continue as long as the provisions of the bill are in effect.

No fiscal implication to units of local government is anticipated.

Source: Agencies:

LBB Staff: JK, TH, JA

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

75th Regular Session

February 10, 1997

To: Honorable Kenny Marchant, Chair
Committee on Financial Institutions
House
Austin, Texas

IN RE: House Joint Resolution
No. 31
By: Patterson, L.P. "Pete"

From: John Keel, Director

In response to your request for a Fiscal Note on HJR31 (Proposing a constitutional amendment permitting an encumbrance to be fixed on a homestead for certain extensions of credit.) this office has determined the following:

Biennial Net Impact to General Revenue Funds by HJR31-As Introduced
--

No fiscal implication to the State is anticipated, other than the cost of publication. The cost to the state for publication of the resolution is \$71,000.

Similar annual fiscal implications would continue as long as the provisions of the bill are in effect.

No fiscal implication to units of local government is anticipated.

Source: Agencies: 332 Department of Housing and Community Affairs
451 Department of Banking
450 Savings and Loan Department
307 Secretary of State
304 Comptroller of Public Accounts

LBB Staff: JK, TH, JA

5

FISCAL NOTE
SENATE AMENDMENTS
HJR 31

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE
75th Regular Session

May 27, 1997

To: Honorable James E. "Pete" Laney
Speaker of the House
House of Representatives
Austin, Texas

IN RE: House Joint Resolution
No. 31, As Passed 2nd
House
Patterson L.P. "Pete"

From: John Keel, Director

In response to your request for a Fiscal Note on HJR31 (Proposing a constitutional amendment permitting an encumbrance against homestead property for certain extensions of equity credit.) this office has determined the following:

Biennial Net Impact to General Revenue Funds by HJR31-As Passed 2nd House
--

Implementing the provisions of the bill would result in a net positive impact of \$21,400 to General Revenue Related Funds through the biennium ending August 31, 1999.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

Fiscal Analysis

The proposed constitutional amendment would permit home equity lending. The Office of the Consumer Credit Commissioner projects that additional examiners will be required to examine an increased number of licensed lenders at an increased cost per examination as a result of the added complexity of the type of examinations conducted. Collected revenues would increase due to the licensure of more regulated lenders, and from fees collected as a result of charges assessed to lenders for examinations.

The bill would also require the Finance Commission to appoint a director to conduct research and produce annual reports on the availability of financial services and on the

practices of businesses that provide financial services in Texas.

Methodology

The Office of the Consumer Credit Commissioner's projected revenues of \$1.5 million during the first year of implementation include increased licensing fees resulting from a projected increase in the number of lenders, as well as revenues generated from examinations. The agency will charge a \$150 surcharge per visit, plus \$32 per hour of examination.

The agency projects that the cost of the new division would include 28 additional full time equivalents (FTEs), including 7 examiners, 4 assistant examiners, 1 attorneys, 1 legal assistant, 4 consumer education specialist, 1 personnel manager, and 10 administrative technicians. Salaries are projected at \$800,000 per year. With additional travel and related operating costs, the total costs of operation and staffing is estimated at slightly over \$1.4 million dollars per year.

The Finance Commission would need one additional FTE to conduct research and produce the annual report. Salary, operating, and other expenses and associated costs would total \$83,300 in FY 1998 and \$78,300 every year thereafter.

In fiscal year 1998, there would also be the cost of publication for the constitutional amendment to be set before the voters.

The probable fiscal implications of Implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Five Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 0001	Probable Revenue Gain/(Loss) from General Revenue Fund 0001	Change in Number of State Employees from FY 1997
1998	(\$1,579,300)	\$1,540,000	29.0
1999	(1,503,300)	1,564,000	29.0
2000	(1,503,300)	1,545,000	29.0
2001	(1,503,300)	1,530,000	29.0
2002	(1,503,300)	1,661,000	29.0

Net Impact on General Revenue Related Funds:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
-------------	--

1998	(\$39,300)
1999	60,700
2000	41,700
2001	26,700
2002	157,700

Similar annual fiscal implications would continue as long as the provisions of the bill are in effect.

No fiscal implication to units of local government is anticipated.

Source: Agencies: 304 Comptroller of Public Accounts
449 Finance Commission of Texas, 466 Office of the Consumer Credit Commis:
LBB Staff: JK, JD, TH, JA

ENROLLED

H.J.R. No. 31

A JOINT RESOLUTION

1 proposing a constitutional amendment permitting an encumbrance
2 against homestead property for certain extensions of equity credit.

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Section 50, Article XVI, Texas Constitution, is
5 amended to read as follows:

6 Sec. 50. (a) The homestead of a family, or of a single
7 adult person, shall be, and is hereby protected from forced sale,
8 for the payment of all debts except for:

9 (1) the purchase money thereof, or a part of such
10 purchase money;

11 (2)~~[7]~~ the taxes due thereon;

12 (3)~~[7]~~ an owelty of partition imposed against the
13 entirety of the property by a court order or by a written agreement
14 of the parties to the partition, including a debt of one spouse in
15 favor of the other spouse resulting from a division or an award of
16 a family homestead in a divorce proceeding;

17 (4)~~[7]~~ the refinance of a lien against a homestead,
18 including a federal tax lien resulting from the tax debt of both
19 spouses, if the homestead is a family homestead, or from the tax
20 debt of the owner;

21 (5)~~[7--er--fer]~~ work and material used in constructing
22 new improvements thereon, if contracted for in writing, or work and
23 material used to repair or renovate existing improvements thereon
24 if:

1 (A) [~~and--in--this--last--case--only--when~~] the work
2 and material are contracted for in writing, with the consent of
3 both spouses, in the case of a family homestead, given in the same
4 manner as is required in making a sale and conveyance of the
5 homestead;

6 (B) the contract for the work and material is
7 not executed by the owner or the owner's spouse before the 12th day
8 after the owner makes written application for any extension of
9 credit for the work and material, unless the work and material are
10 necessary to complete immediate repairs to conditions on the
11 homestead property that materially affect the health or safety of
12 the owner or person residing in the homestead and the owner of the
13 homestead acknowledges such in writing;

14 (C) the contract for the work and material
15 expressly provides that the owner may rescind the contract without
16 penalty or charge within three days after the execution of the
17 contract by all parties, unless the work and material are necessary
18 to complete immediate repairs to conditions on the homestead
19 property that materially affect the health or safety of the owner
20 or person residing in the homestead and the owner of the homestead
21 acknowledges such in writing; and

22 (D) the contract for the work and material is
23 executed by the owner and the owner's spouse only at the office of
24 a third-party lender making an extension of credit for the work and
25 material, an attorney at law, or a title company;

26 (6) an extension of credit that:

27 (A) is secured by a voluntary lien on the

1 homestead created under a written agreement with the consent of
2 each owner and each owner's spouse;

3 (B) is of a principal amount that when added to
4 the aggregate total of the outstanding principal balances of all
5 other indebtedness secured by valid encumbrances of record against
6 the homestead does not exceed 80 percent of the fair market value
7 of the homestead on the date the extension of credit is made;

8 (C) is without recourse for personal liability
9 against each owner and the spouse of each owner, unless the owner
10 or spouse obtained the extension of credit by actual fraud;

11 (D) is secured by a lien that may be foreclosed
12 upon only by a court order;

13 (E) does not require the owner or the owner's
14 spouse to pay, in addition to any interest, fees to any person that
15 are necessary to originate, evaluate, maintain, record, insure, or
16 service the extension of credit that exceed, in the aggregate,
17 three percent of the original principal amount of the extension of
18 credit;

19 (F) is not a form of open-end account that may
20 be debited from time to time or under which credit may be extended
21 from time to time;

22 (G) is payable in advance without penalty or
23 other charge;

24 (H) is not secured by any additional real or
25 personal property other than the homestead;

26 (I) is not secured by homestead property
27 designated for agricultural use as provided by statutes governing

1 property tax, unless such homestead property is used primarily for
2 the production of milk;

3 (J) may not be accelerated because of a decrease
4 in the market value of the homestead or because of the owner's
5 default under other indebtedness not secured by a prior valid
6 encumbrance against the homestead;

7 (K) is the only debt secured by the homestead at
8 the time the extension of credit is made unless the other debt was
9 made for a purpose described by Subsections (a)(1)-(a)(5) of this
10 section;

11 (L) is scheduled to be repaid in substantially
12 equal successive monthly installments beginning no later than two
13 months from the date the extension of credit is made, each of which
14 equals or exceeds the amount of accrued interest as of the date of
15 the scheduled installment;

16 (M) is closed not before:

17 (i) the 12th day after the later of the
18 date that the owner of the homestead submits an application to the
19 lender for the extension of credit or the date that the lender
20 provides the owner a copy of the notice prescribed by Subsection
21 (g) of this section; and

22 (ii) the first anniversary of the closing
23 date of any other extension of credit described by Subsection
24 (a)(6) of this section secured by the same homestead property;

25 (N) is closed only at the office of the lender,
26 an attorney at law, or a title company;

27 (O) permits a lender to contract for and receive

1 any fixed or variable rate of interest authorized under statute;

2 (P) is made by one of the following that has not
3 been found by a federal regulatory agency to have engaged in the
4 practice of refusing to make loans because the applicants for the
5 loans reside or the property proposed to secure the loans is
6 located in a certain area:

7 (i) a bank, savings and loan association,
8 savings bank, or credit union doing business under the laws of this
9 state or the United States;

10 (ii) a federally chartered lending
11 instrumentality or a person approved as a mortgagee by the United
12 States government to make federally insured loans;

13 (iii) a person licensed to make regulated
14 loans, as provided by statute of this state;

15 (iv) a person who sold the homestead
16 property to the current owner and who provided all or part of the
17 financing for the purchase; or

18 (v) a person who is related to the
19 homestead property owner within the second degree of affinity or
20 consanguinity; and

21 (Q) is made on the condition that:

22 (i) the owner of the homestead is not
23 required to apply the proceeds of the extension of credit to repay
24 another debt except debt secured by the homestead or debt to
25 another lender;

26 (ii) the owner of the homestead not assign
27 wages as security for the extension of credit;

1 (iii) the owner of the homestead not sign
2 any instrument in which blanks are left to be filled in;

3 (iv) the owner of the homestead not sign a
4 confession of judgment or power of attorney to the lender or to a
5 third person to confess judgment or to appear for the owner in a
6 judicial proceeding;

7 (v) the lender, at the time the extension
8 of credit is made, provide the owner of the homestead a copy of all
9 documents signed by the owner related to the extension of credit;

10 (vi) the security instruments securing the
11 extension of credit contain a disclosure that the extension of
12 credit is the type of credit defined by Section 50(a)(6), Article
13 XVI, Texas Constitution;

14 (vii) within a reasonable time after
15 termination and full payment of the extension of credit, the lender
16 cancel and return the promissory note to the owner of the homestead
17 and give the owner, in recordable form, a release of the lien
18 securing the extension of credit or a copy of an endorsement and
19 assignment of the lien to a lender that is refinancing the
20 extension of credit;

21 (viii) the owner of the homestead and any
22 spouse of the owner may, within three days after the extension of
23 credit is made, rescind the extension of credit without penalty or
24 charge;

25 (ix) the owner of the homestead and the
26 lender sign a written acknowledgment as to the fair market value of
27 the homestead property on the date the extension of credit is made;

1 and

2 (x) the lender or any holder of the note
3 for the extension of credit shall forfeit all principal and
4 interest of the extension of credit if the lender or holder fails
5 to comply with the lender's or holder's obligations under the
6 extension of credit within a reasonable time after the lender or
7 holder is notified by the borrower of the lender's failure to
8 comply; or

9 (7) a reverse mortgage.

10 (b) An [~~nor--may--the~~] owner or claimant of the property
11 claimed as homestead may not [~~7--if-married7~~] sell or abandon the
12 homestead without the consent of each owner and the [~~ether~~] spouse
13 of each owner, given in such manner as may be prescribed by law.

14 (c) No mortgage, trust deed, or other lien on the homestead
15 shall ever be valid unless it secures a debt described by this
16 section, [~~except-for-a-debt-described--by--this--section7~~] whether
17 such mortgage, [~~or~~] trust deed, or other lien, shall have been
18 created by the owner alone, or together with his or her spouse, in
19 case the owner is married. All pretended sales of the homestead
20 involving any condition of defeasance shall be void.

21 (d) A purchaser or lender for value without actual knowledge
22 may conclusively rely on an affidavit that designates other
23 property as the homestead of the affiant and that states that the
24 property to be conveyed or encumbered is not the homestead of the
25 affiant.

26 (e) A refinance of debt secured by a homestead and described
27 by any subsection under Subsections (a)(1)-(a)(5) that includes the

1 advance of additional funds may not be secured by a valid lien
2 against the homestead unless:

3 (1) the refinance of the debt is an extension of
4 credit described by Subsection (a)(6) of this section; or

5 (2) the advance of all the additional funds is for
6 reasonable costs necessary to refinance such debt or for a purpose
7 described by Subsection (a)(2), (a)(3), or (a)(5) of this section.

8 (f) A refinance of debt secured by the homestead, any
9 portion of which is an extension of credit described by Subsection
10 (a)(6) of this section, may not be secured by a valid lien against
11 the homestead unless the refinance of the debt is an extension of
12 credit described by Subsection (a)(6) of this section.

13 (g) An extension of credit described by Subsection (a)(6) of
14 this section may be secured by a valid lien against homestead
15 property if the extension of credit is not closed before the 12th
16 day after the lender provides the owner with the following written
17 notice on a separate instrument:

18 "NOTICE CONCERNING EXTENSIONS OF CREDIT

19 DEFINED BY SECTION 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

20 "SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION
21 ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME.
22 SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY
23 THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER
24 MAY FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

25 "(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT
26 OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;

27 "(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE

1 MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL
2 BALANCES OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80
3 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME;

4 "(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL
5 LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE
6 OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;

7 "(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY
8 WITH A COURT ORDER;

9 "(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3
10 PERCENT OF THE LOAN AMOUNT;

11 "(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE
12 DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED
13 FROM TIME TO TIME;

14 "(G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;

15 "(H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

16 "(I) THE LOAN MAY NOT BE SECURED BY AGRICULTURAL HOMESTEAD
17 PROPERTY, UNLESS THE AGRICULTURAL HOMESTEAD PROPERTY IS USED
18 PRIMARILY FOR THE PRODUCTION OF MILK;

19 "(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN
20 AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES
21 OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR
22 HOME;

23 "(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE
24 XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY
25 GIVEN TIME;

26 "(L) THE LOAN MUST BE SCHEDULED TO BE REPAYED IN PAYMENTS
27 THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH

1 PAYMENT PERIOD;

2 "(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT
3 A WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU
4 RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND IF YOUR HOME WAS
5 SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN
6 SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS
7 PASSED FROM THE CLOSING DATE OF THE OTHER LOAN;

8 "(N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER,
9 TITLE COMPANY, OR AN ATTORNEY AT LAW;

10 "(O) THE LENDER MAY CHARGE ANY FIXED OR VARIABLE RATE OF
11 INTEREST AUTHORIZED BY STATUTE;

12 "(P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS
13 DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS
14 CONSTITUTION; AND

15 "(Q) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF
16 THE TEXAS CONSTITUTION MUST:

17 "(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER
18 DEBT THAT IS NOT SECURED BY YOUR HOME OR TO ANOTHER DEBT TO THE
19 SAME LENDER;

20 "(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

21 "(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH
22 HAVE BLANKS LEFT TO BE FILLED IN;

23 "(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF
24 JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT
25 OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

26 "(5) PROVIDE THAT YOU RECEIVE A COPY OF ALL DOCUMENTS
27 YOU SIGN AT CLOSING;

1 "(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A
2 DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6),
3 ARTICLE XVI, OF THE TEXAS CONSTITUTION;

4 "(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE
5 LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF
6 THE LIEN, WHICHEVER IS APPROPRIATE;

7 "(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER
8 CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

9 "(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE
10 FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSSES; AND

11 "(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL
12 PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE
13 LENDER'S OBLIGATIONS."

14 If the discussions with the borrower are conducted primarily
15 in a language other than English, the lender shall, before closing,
16 provide an additional copy of the notice translated into the
17 written language in which the discussions were conducted.

18 (h) A lender or assignee for value may conclusively rely on
19 the written acknowledgment as to the fair market value of the
20 homestead property made in accordance with Subsection (a)(6)(Q)(ix)
21 of this section if:

22 (1) the value acknowledged to is the value estimate in
23 an appraisal or evaluation prepared in accordance with a state or
24 federal requirement applicable to an extension of credit under
25 Subsection (a)(6); and

26 (2) the lender or assignee does not have actual
27 knowledge at the time of the payment of value or advance of funds

1 by the lender or assignee that the fair market value stated in the
2 written acknowledgment was incorrect.

3 (i) This subsection shall not affect or impair any right of
4 the borrower to recover damages from the lender or assignee under
5 applicable law for wrongful foreclosure. A purchaser for value
6 without actual knowledge may conclusively presume that a lien
7 securing an extension of credit described by Subsection (a)(6) of
8 this section was a valid lien securing the extension of credit with
9 homestead property if:

10 (1) the security instruments securing the extension of
11 credit contain a disclosure that the extension of credit secured by
12 the lien was the type of credit defined by Section 50(a)(6),
13 Article XVI, Texas Constitution;

14 (2) the purchaser acquires the title to the property
15 pursuant to or after the foreclosure of the voluntary lien; and

16 (3) the purchaser is not the lender or assignee under
17 the extension of credit.

18 (j) Subsection (a)(6) and Subsections (e)-(i) of this
19 section are not severable, and none of those provisions would have
20 been enacted without the others. If any of those provisions are
21 held to be preempted by the laws of the United States, all of those
22 provisions are invalid. This subsection shall not apply to any
23 lien or extension of credit made after January 1, 1998, and before
24 the date any provision under Subsection (a)(6) or Subsections
25 (e)-(i) is held to be preempted.

26 (k) "Reverse mortgage" means an extension of credit:

27 (1) that is secured by a voluntary lien on homestead

1 property created by a written agreement with the consent of each
2 owner and each owner's spouse;

3 (2) that is made to a person who is or whose spouse is
4 55 years or older;

5 (3) that is made without recourse for personal
6 liability against each owner and the spouse of each owner;

7 (4) under which advances are provided to a borrower
8 based on the equity in a borrower's homestead;

9 (5) that does not permit the lender to reduce the
10 amount or number of advances because of an adjustment in the
11 interest rate if periodic advances are to be made;

12 (6) that requires no payment of principal or interest
13 until:

14 (A) the homestead property securing the loan is
15 sold or otherwise transferred; or

16 (B) all borrowers cease occupying the homestead
17 property as a principal residence for more than 180 consecutive
18 days and the location of the homestead property owner is unknown to
19 the lender;

20 (7) that provides that if the lender fails to make
21 loan advances as required in the loan documents and if the lender
22 fails to cure the default as required in the loan documents, the
23 lender forfeits all principal and interest of the reverse mortgage;
24 and

25 (8) that is not made unless the owner of the homestead
26 attests in writing that the owner received counseling regarding the
27 advisability and availability of reverse mortgages and other

1 financial alternatives.

2 (l) Advances made under a reverse mortgage and interest on
3 those advances have priority over a lien filed for record in the
4 real property records in the county where the homestead property is
5 located after the reverse mortgage is filed for record in the real
6 property records of that county.

7 (m) A reverse mortgage may provide for an interest rate that
8 is fixed or adjustable and may also provide for interest that is
9 contingent on appreciation in the fair market value of the
10 homestead property. Although payment of principal or interest
11 shall not be required under a reverse mortgage until the entire
12 loan becomes due and payable, interest may accrue and be compounded
13 during the term of the loan as provided by the reverse mortgage
14 loan agreement.

15 (n) A reverse mortgage that is secured by a valid lien
16 against homestead property may be made or acquired without regard
17 to the following provisions of any other law of this state:

18 (1) a limitation on the purpose and use of future
19 advances or other mortgage proceeds;

20 (2) a limitation on future advances to a term of years
21 or a limitation on the term of open-end account advances;

22 (3) a limitation on the term during which future
23 advances take priority over intervening advances;

24 (4) a requirement that a maximum loan amount be stated
25 in the reverse mortgage loan documents;

26 (5) a prohibition on balloon payments;

27 (6) a prohibition on compound interest and interest on

1 interest;

2 (7) a prohibition on contracting for, charging, or
3 receiving any rate of interest authorized by any law of this state
4 authorizing a lender to contract for a rate of interest; and

5 (8) a requirement that a percentage of the reverse
6 mortgage proceeds be advanced before the assignment of the reverse
7 mortgage.

8 (o) For the purposes of determining eligibility under any
9 statute relating to payments, allowances, benefits, or services
10 provided on a means-tested basis by this state, including
11 supplemental security income, low-income energy assistance,
12 property tax relief, medical assistance, and general assistance:

13 (1) reverse mortgage loan advances made to a borrower
14 are considered proceeds from a loan and not income; and

15 (2) undisbursed funds under a reverse mortgage loan
16 are considered equity in a borrower's home and not proceeds from a
17 loan.

18 (p) The advances made on a reverse mortgage loan under which
19 more than one advance is made must be made at regular intervals
20 according to a plan established by the original loan agreement.

21 (q) To the extent that any statutes of this state, including
22 without limitation, Section 41.001 of the Texas Property Code,
23 purport to limit encumbrances that may properly be fixed on
24 homestead property in a manner that does not permit encumbrances
25 for extensions of credit described in Subsection (a)(6) or (a)(7)
26 of this section, the same shall be superseded to the extent that
27 such encumbrances shall be permitted to be fixed upon homestead

1 property in the manner provided for by this amendment.

2 (r) The supreme court shall promulgate rules of civil
3 procedure for expedited foreclosure proceedings related to the
4 foreclosure of liens under Subsection (a)(6) of this section.

5 (s) The Finance Commission of Texas shall appoint a director
6 to conduct research on the availability, quality, and prices of
7 financial services and research the practices of business entities
8 in the state that provide financial services under this section.
9 The director shall collect information and produce reports on
10 lending activity of those making loans under this section. The
11 director shall report his or her findings to the legislature not
12 later than December 1 of each year.

13 SECTION 2. The following temporary provision is added to the
14 Texas Constitution:

15 TEMPORARY PROVISION. (a) This temporary provision applies
16 to the constitutional amendment proposed by the 75th Legislature,
17 Regular Session, 1997, authorizing a voluntary consensual
18 encumbrance on homestead property.

19 (b) The constitutional amendment takes effect January 1,
20 1998.

21 (c) This temporary provision takes effect on the adoption of
22 the amendment by the voters and expires January 2, 1998.

23 SECTION 3. This proposed constitutional amendment shall be
24 submitted to the voters at an election to be held November 4, 1997.
25 The ballot shall be printed to permit voting for or against the
26 proposition: "The amendment to the Texas Constitution expanding
27 the types of liens for home equity loans that a lender, with the

H.J.R. No. 31

1 homeowner's consent, may place against a homestead."

H.J.R. No. 31

President of the Senate

Speaker of the House

I certify that H.J.R. No. 31 was passed by the House on May 9, 1997, by the following vote: Yeas 112, Nays 36, 1 present, not voting; and that the House concurred in Senate amendments to H.J.R. No. 31 on May 29, 1997, by the following vote: Yeas 116, Nays 25, 2 present, not voting and that the House adopted H.C.R. No. 326 authorizing certain corrections in H.J.R. No. 31 on May 31, 1997, by a non-record vote.

Chief Clerk of the House

H.J.R. No. 31

I certify that H.J.R. No. 31 was passed by the Senate, with amendments, on May 26, 1997, by the following vote: Yeas 22, Nays 7, 2 present, not voting and that the Senate adopted H.C.R. No. 326 authorizing certain corrections in H.J.R. No. 31 on June 1, 1997, by a viva-voce vote.

Secretary of the Senate

RECEIVED: _____

Date

Secretary of State

President of the Senate

Speaker of the House

I certify that H.J.R. No. 31⁽¹⁾ was passed by the House
on May 9⁽²⁾, 1997, by the following vote:

Yeas 112⁽³⁾, Nays 36, 1 present, 4 not voting⁽⁴⁾;

and that the House concurred in Senate amendments to H.J.R. No. 31⁽¹⁾
on May 29⁽⁵⁾, 1997, by the following

vote: Yeas 116⁽⁶⁾, Nays 25, 2 present, 4 not voting⁽⁷⁾ Insert A

Chief Clerk of the House

**** Preparation: CT19;

I certify that H.J.R. No. 31⁽¹⁾ was passed by the Senate, with
amendments, on May 26⁽²⁾, 1997, by the following

vote: Yeas 22⁽³⁾, Nays 7, 2 present, 4 not voting⁽⁴⁾ Insert B

Secretary of the Senate

RECEIVED:

Date

Secretary of State

**** Preparation: CT20;

INSERT A

and that the House adopted H.C.R. No. 326⁽¹⁾ authorizing certain
corrections in ~~H.B.~~^{H.J.R.} No. 31⁽²⁾ on May 31⁽³⁾, 1997,
by a non-record vote.

**** Preparation: CT65;

INSERT B

and that the Senate adopted H.C.R. No. 326⁽¹⁾ authorizing certain
corrections in ~~H.B.~~^{H.J.R.} No. 31⁽²⁾ on June 1⁽³⁾, 1997,
by a viva-voce vote.

**** Preparation: CT66;

COAUTHOR AUTHORIZATION-75TH LEGISLATURE
(please request your coauthors to sign this form
in lieu of the front or the back of the original bill)

For chief clerk use only

Bill or Resolution Number:

HR 31

L P Pete Patterson
signature of primary author

L P Pete Patterson
printed name of primary author

12-11-96
Date

PERMISSION TO SIGN hr 31 HAS BEEN GIVEN TO (check only one of the following):
(bill or resolution #)

☒ ALL REPRESENTATIVES

☐ THE FOLLOWING REPRESENTATIVE(S): _____

I authorize the Chief Clerk to include my name as a coauthor of the legislation indicated above:

A2120 Alexander	Date	A2645 Cuellar	Date	A2935 Giddings	Date
A2115 Allen	Date	A2635 Culberson	Date	A2880 Glaze	Date
A2105 Alvarado	Date	A2670 Danburg	Date	A2985 Goodman	Date
<u>Averitt</u> <u>4-23-97</u>	Date	A2675 Davila	Date	A2990 Goolsby	Date
A2135 Averitt	Date	A2625 Davis	Date	A3005 Gray	Date
A2160 Bailey	Date	A2680 Delisi	Date	A3010 Greenberg	Date
A2200 Berlanga	Date	A3385 Denny	Date	A3020 Grusendorf	Date
A2250 Bonnen	Date	A2705 Driver	Date	A3030 Gutierrez	Date
A2275 Bosse	Date	A2665 Dukes	Date	A3035 Haggerty	Date
A2260 Brimer	Date	A2660 Dunnam	Date	<u>Haggerty</u> <u>4-29-97</u>	Date
A2255 Burnam	Date	A2650 Dutton	Date	A2690 Hamric	Date
A2400 Carter	Date	<u>A2770 Edwards</u>	Date	A3170 Hartnett	Date
A2585 Chavez	Date	A2760 Ehrhardt	Date	A3345 Hawley	Date
<u>Chisum</u> <u>2/3/97</u>	Date	A2775 Eliland	Date	A3180 Heflin	Date
A2480 Chisum	Date	<u>Elkins</u> <u>2/13/97</u>	Date	A3230 Hernandez	Date
A2525 Christian	Date	A2810 Farrar	Date	A3240 Hightower	Date
A2520 Clark	Date	A2830 Finnell	Date	A3310 Hilbert	Date
A2435 Coleman	Date	A2840 Flores	Date	A3250 Hilderbran	Date
A2565 Cook	Date	A2920 Gallego	Date	A3275 Hill	Date
A2595 Corte	Date	A2910 Galloway	Date	A3270 Hinojosa	Date
A2600 Counts	Date	A2930 Garcia	Date	A3285 Hirschi	Date
A2605 Crabb	Date			A3305 Hochberg	Date
A2610 Craddick	Date				

For chief clerk use only
Bill or Resolution Number: hjr 31

A3290 Hodge	Date	A3845 McReynolds	Date	A4435 Shields	Date	<i>J.H. Shields</i> 5-06-97
A3295 Holzheuser	Date	A3840 Merritt	Date	A4445 Siebert	Date	<i>W.H. Smith</i> 4/21/97
A3300 Horn	Date	A3850 Moffat	Date	A4525 Smith	Date	
A3315 Howard	Date	A3860 Moreno	Date	A4530 Smithee	Date	
A3355 Hunter	Date	A3865 Mowery	Date	A4550 Solis	Date	
A3360 Hupp	Date	A3885 Naishtat	Date	A4505 Solomons	Date	
A3375 Isett	Date	A3895 Nixon	Date	A4515 Staples	Date	
A3380 Jackson	Date	A3875 Oakley	Date	A4510 Stiles	Date	
A3415 Janek	Date	A3990 Ogden	Date	A4570 Swinford	Date	<i>W.H. Smith</i> 1-20-97
A3405 Jones, Delwin	Date	A3880 Oliveira	Date	A4585 Talton	Date	
A3400 Jones, Jesse	Date	A3886 Olivo	Date	A4605 Telford	Date	
A3440 Jones	Date	A4010 Palmer	Date	A4630 Thompson	Date	
A3460 Kamel	Date	A4070 Patterson	Date	A4635 Tillery	Date	
A3475 Keel	Date	A4180 Pickett	Date	A4640 Torres	Date	
A3480 Keffer	Date	A4185 Pitts	Date	A2730 Turner, Bob	Date	
A3465 King	Date	A4110 Place	Date	A4685 Turner, Sylvester	Date	
A3485 Krusee	Date	A4190 Price	Date	A4690 Uher	Date	
A3490 Kubiak	Date	A4200 Puento	Date	A4720 Van de Putte	Date	
A3450 Kuempel	Date	A4230 Rabuck	Date	A4990 Walker	Date	
A3510 Laney	Date	A4210 Ramsay	Date	A4995 West	Date	
A3605 Lewis, Glenn	Date	A4240 Rangel	Date	A5035 Williams	Date	
A3600 Lewis, Ron	Date	A4235 Raymond	Date	A5010 Williamson	Date	
A3615 Longoria	Date	A4245 Reyna, Arthur	Date	A5000 Wilson	Date	
A3620 Luna, Vilma	Date	A4236 Reyna, Elvira	Date	A5020 Wise	Date	
A3715 Madden	Date	A4260 Rhodes	Date	A5015 Wohlgenuth	Date	
A3750 Marchant	Date	A4315 Rodriguez	Date	A4980 Wolens	Date	
A2700 Maxey	Date	A4370 Sadler	Date	A5005 Woolley	Date	
A3665 McCall	Date	A4420 Seaman	Date	A5025 Yarbrough	Date	
A3650 McClendon	Date	A4460 Serna	Date	A5040 Zbranek	Date	

JOINT AUTHOR AUTHORIZATION

As primary author of HJR 31 I hereby authorize the following joint author(s):
(bill or resolution #)

Barry B. Telford
printed name of joint author #1

Barry Telford
signature of joint author #1

4/11/97
Status
to co-author

Bob RABuck
printed name of joint author #2

RABuck
signature of joint author #2

on new
form

Tom Ransby
printed name of joint author #3

Tom Ransby
signature of joint author #3

APR 11 1997
Status changed
to co-author
per letter

G.E. (Buddy) West
printed name of joint author #4

Buddy West
signature of joint author #4

4/11/97
WITHDRAWN
as joint
Added
as co-author

L.P. Pete Patterson
signature of primary author
L. P. PETE PATTERSON

12-4-96
date

PRINTED NAME OF JOINT #3

SIGNATURE OF JOINT #3

PRINTED NAME OF JOINT #4

SIGNATURE OF JOINT #4

ORIGINAL FORM--Place in book

SEND COPIES TO:
Debbie Irvine (Legislative Council)
Legislative Reference Library
House Journal

Revised

for chief clerk use only

Bill or Resolution Number: HJR 31

JOINT AUTHOR AUTHORIZATION

As primary author of HJR 31 I hereby authorize the following joint author(s):
(bill or resolution #)

Kenny Marchant
~~Debra Danburg~~
printed name of joint author #1

[Signature]
signature of joint author #1

APR 16 1997

Debra Danburg
printed name of joint author #2

[Signature]
signature of joint author #2

APR 16 1997

Bob Ra Buck
printed name of joint author #3

[Signature]
signature of joint author #3

APR 16 1997

Gust Solomon
printed name of joint author #4

[Signature]
signature of joint author #4

APR 16 1997

[Signature]
signature of primary author

4-16-97
date

P.O. BOX 2910
AUSTIN, TX 78768-2910
(512) 463-0680
FAX: (512) 463-8328



P.O. BOX 633
MT. VERNON, TX 75457
(903) 537-2212
FAX: (903) 537-2628

TOM RAMSAY
TEXAS HOUSE OF REPRESENTATIVES

April 14, 1997

Ms. Sharon Carter
Chief Clerks Office
Texas House of Representatives

APR 14 1997

Dear Ms. Carter:

Please accept this letter as my formal request to remove my name as a joint author of HJR31 and HB295, and replace it as a co-author instead on both pieces of legislation.

If you have any questions regarding this request, please do not hesitate to contact me or my staff at 463-0680.

Thank you for your assistance.

Sincerely,

Tom Ramsay
State Representative
District 2

STATE of TEXAS
HOUSE of REPRESENTATIVES



Austin Office:
P.O. Box 2910
Austin, Texas 78768-2910
512-463-0546

District Office:
4526 East University
Building V, Suite G
Odessa, Texas 79762
915-367-2721

G.E. (BUDDY) WEST
DISTRICT 81

May 7, 1997

Attn: Ms. Sharon Carter, Chief Clerk
Texas House of Representatives
House Chamber
Austin, TX

Dear Ms. Carter:

Please accept this letter as my formal request that my name be removed as a co-author or joint author of the following bills/resolutions:

HB1188
HJR31

If my name has been removed on one or both of these previously, please disregard this letter.

Thank you very much.

Sincerely,

A handwritten signature in black ink, appearing to read "Buddy West", written over a horizontal line.

Buddy West
State Representative

April 11, 1997

Ms. Sharon Carter
Chief Clerk
House of Representatives

Dear Ms. Carter:

Please accept this letter as my request to remove my name as a joint author of HJR 31 and HB 295 and place it as a co-sponsor on this legislation.

A handwritten signature in cursive script, appearing to read "Gary Jefferson". The signature is written in dark ink and is positioned to the right of the main text block.

APR 16 1997

Proposing a constitutional amendment permitting an encumbrance to be fixed on a homestead for certain extensions of credit.

DEC 11 1996

Filed with the Chief Clerk

JAN 30 1997

Read first time and referred to Committee on

Financial Institutions

APR 17 1997

Reported favorably ~~(as substituted)~~
(as substituted)

APR 30 1997

Sent to Committee on Calendars

MAY 9 1997

Read second time (comm. subst.) (amended) and adopted (~~passed to third reading~~) by a record vote of 112 yeas, 36 nays, 1 present, not voting

Read third time (amended) and finally adopted (failed of adoption) by a record vote of _____ yeas, _____ nays, _____ present, not voting

MAY 10 1997

Engrossed

MAY 18 1997

Sent to Senate

Sharon Carter

CHIEF CLERK OF THE HOUSE

OTHER HOUSE ACTION:

MAY 10 1997

Received from the House

MAY 18 1997

Read and referred to Committee on STATE AFFAIRS

MAY 18 1997

Reported favorably

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time

Ordered not printed

Laid before the Senate

MAY 24 1997

Senate and Constitutional Rules to permit consideration suspended by (unanimous consent)

(21 yeas, 7 nays) 1pNV

MAY 24 1997

Read second time, amended, and passed to third reading by (unanimous consent)

(a viva voce vote)
(21 yeas, 8 nays) 1pNV

MAY 26 1997

Senate and Constitutional 3 Day Rules suspended by a vote of _____ yeas, _____ nays

Senate Regular order of business suspended by 21 yeas 8 nays 2pNV

MAY 26 1997

Read third time, amended, and passed by 22 yeas, 7 nays 2pNV

May 26, 1997

Returned to the House

Loretta King
SECRETARY OF THE SENATE

OTHER SENATE ACTION:

MAY 26 1997

Returned from the Senate ()
(with amendments)

MAY 29 1997

House concurred in Senate amendments by a ()
(record vote of 116 yeas, 25 nays, 2 present, not voting)

House refused to concur in Senate amendments and requested the appointment of a conference committee
by a (non-record vote) (record vote of _____ yeas, _____ nays, _____ present, not voting)

House conferees appointed: _____, Chair; _____,

Senate granted House request. Senate conferees appointed: _____, Chair;

Conference committee report adopted (rejected) by the House by a record vote of
_____ yeas, _____ nays, _____ present, not voting

Conference committee report adopted (rejected) by the Senate by a record vote of
_____ yeas, _____ nays